

1 had to reimburse the Plaintiff. When the Holiday Bowl Committee member asked the
2 Plaintiff if the tickets were complimentary for no charge the Plaintiff refused the gift and
3 paid for them. The General Counsel knew he was in violation of the Ethics Code when
4 he made the request for the favors from the Plaintiff.

5 After the Plaintiff filed his Claim with the Airport Authority, the General Counsel
6 wrote to the Plaintiff that "the facts about me are false, misleading, defamatory,
7 slanderous, libelous" because the number of tickets he requested was six, not eight, and
8 the price he paid for the tickets was \$300.00 not \$400.00. He then threatened to pursue
9 legal action against the Plaintiff for "filing a false defamatory accusation against [him]"
10 because "Mr. Hernandez had volunteered to pick up the tickets since he already had
11 plans to visit the ticket the ticket [sic] location", a statement which is untrue. The
12 General Counsel's threat is an additional and separate violation of the Ethics Code.

13 k. The Plaintiff was present with the Vice President of Operations when the
14 Chairman of the Board of the Authority requested a contractor to be hired to re-survey
15 his Authority office space for "listening devices." The Chairman's office space had
16 previously on two separate occasions been surveyed for "bugging devices" or other
17 "listening apparatus." The Chairman was worried that his communications could be
18 intercepted by the FBI or similar such agencies. This contract request is a gross waste of
19 the Authority funds.

20 l. The Vice President of Budget and Finance, representing himself and
21 Thella Bowens as Board members of the Jackie Robinson YMCA, requested that the
22 Plaintiff secure a free round trip airline ticket for the owner of national basketball team.
23 The request was made so that the owner could be the featured speaker at a banquet.

24 m. The Vice President of Operations with the full knowledge of Thella
25 Bowens, requested that the Plaintiff secure free round tip airline tickets to be donated
26 as the featured prizes of the annual United Way campaign. The Plaintiff did this twice.

27 n. Thella Bowens requested from the Plaintiff that a marked reserved parking
28

1 stall be designated in the employee parking lot at the Commuter Terminal for her
2 personal use. Bowens then never used the stall, choosing to park elsewhere and
3 she reassigned the stall to the Vice President of Budget and Finance. That particular
4 reserved parking staff is clearly marked for use only by the President/CEO of the
5 Airport Authority. The designation of the parking stall to the Vice President of Budget
6 and Finance clearly connotes preferential treatment and is a violation of Airport Authority
7 rules and regulations.

8 o. The Vice President of Operations instructed the Plaintiff to use his
9 position as Director of Landside Operations to secure a limousine from one of the
10 Airport's service providers to be used as part of the procession for a colleague's wife's
11 funeral.

12 38. Under the Authority's Ethics Code found in Article 2, et seq.: "No Board member
13 or employee of the Authority shall use or threaten to use any official power or influence
14 to discourage, restrain or interfere with any other person for the purpose of preventing
15 such person from acting in good faith to report or otherwise to bring to the attention of
16 the Board *or any other appropriate agency, office or department* any information which,
if true, would constitute:

17 (1) a work-related violation by a Board member or employee of any law or
18 regulation, including this Ethics Code;

19 (2) a gross waste of Authority funds;

20 (3) a gross abuse of power;

21 (4) a conflict of interest of a Board member or employee; or

22 (5) No Board member or employee of the Authority shall use or threaten to use
23 any official authority or influence to effect any action as a reprisal against a Board
24 member or employee who reports or otherwise brings to the attention of the Board or
25 other appropriate agency, office or department, any information regarding the subjects
26 described in Subsection (a)

1 The Plaintiff attempted, time and time again, to bring to the attention of the
2 attorney from LUCE FORWARD the above-stated Ethics violations and every single
3 time the attorney from LUCE FORWARD interrupted and spoke over the Plaintiff to
4 prevent the Plaintiff from reporting violations, both legal and ethical, that he was aware
5 of and had not been 'investigated.' The attorney was not interested in knowing about the
6 above-stated violations or any incident that did not show wrongdoing by the Plaintiff.
7 The Plaintiff did his best to report, disclose, divulge and bring to the attention of his
8 employer's 'investigator' (the attorney from LUCE FORWARD) facts and information
9 relative to both suspected and actual violations of state law directly related to his job.
10 The Plaintiff observed improper governmental activity by employees of the Authority
11 undertaken in the performance of the employee's official duties that demonstrated
12 economic waste, incompetency and inefficiency. The 'investigator' Thella Bowens hired
13 (the lawyer from LUCE FORWARD) attempted to use and used, both directly and
14 indirectly, intimidating, threatening, coercing, and commanding tactics to influence the
15 information he was told by the Plaintiff and by the witnesses during their interviews.
16 Thella Bowens could not have reasonably believed that taking personnel action, including
17 hiring and directing an 'investigation' into the Plaintiff's alleged but not articulated
18 violations of the Authority's Ethics policy was and is justified based on her own and her
19 direct report employees' own well-know violations of the same policies and Codes.
20 Bowens was well aware that the evidence of her own violations were known to the
21 Plaintiff and when he reported those violations to her hired 'investigator' he was cut off
22 and told not to discuss them. Other witnesses also disclosed to Bowen's 'investigator'
23 knowledge of Bowne's wrongdoing as well as the Ethics violations by her Vice
24 Presidents that Bowens condoned and ratified.

25 39. The Plaintiff contends he disclosed a number of legal violations for which the
26 Authority retaliated against him.

27 The first disclosure arose from the Plaintiff's opposition to a "side deal" that
28

1 Bryan Enarson made with a concessionaire at the airport, Host, that restricted the
2 Authority's ability to annex the space needed to comply with ADA requirement for the
3 women's restroom at the airport.. The result of Enarson's actions increased the project
4 budget by over \$2 million. The Plaintiff believed this resulted in legal noncompliance
5 with the ADA requirements which were well settled at that time and took precedence
6 over the handshake agreement Enarson made without negotiation with Host.

7 The second disclosure also arose from events involving Enarson, who was the
8 lead negotiator on behalf of the Airport for the property known as the General Dynamics
9 property. Enarson proceeded with the negotiations without ascertaining the extent of the
10 "public hazards around the airport" and resulted in a lease agreement that loses millions of
11 dollars per year for the Authority.

12 The third disclosure involved the misuse and waste of the usable land around the
13 property known as the Teledyne Ryan property. Enarson proceeded with the negotiations
14 without ascertaining the extent of the "public hazards around the airport" and that
15 resulted in a lease agreement that loses millions of dollars per year for the Authority.
16 Enarson then blocked open discussion of the problem and no resolution has been
17 attempted.

18 The fourth and final disclosure encompassed the issue of the contract bid by the
19 Lindbergh Parking, Inc. (LPI) and its failure to meet its contract expectations and the
20 offenses and actions by the LPI that indicate a lack of business integrity.

21 The Plaintiff believes it was the personal relationship of the President/CEO of the
22 Authority, Thella Bowens (Doe No.1) who has shown favoritism, partiality and a refusal
23 to hold those of the same minority race as herself to the same accountability as the Ethics
24 Code and other laws and regulations require. Besides Enarson, who is white, and a
25 premier kiss ass, Bowens has never applied the same policy standards to herself or to her
26 Vice Presidents who are black. Maurice Gray is black and is the beneficiary of not
27 having to comply with the standards and requirements that other Authority contractors
28

1 have been held to. By eliminating the Plaintiff from his job she has assured that no one
2 else surrounding her at the high management levels will speak up or oppose whatever it is
3 she desires to do, both personally and in her job position. Thella Bowens (Doe No.1)
4 made it clear through the attorney she hired from LUCE FORWARD and through the
5 investigator the attorney hired that she alone would make the determinations as to
6 conclusions and findings of the two. Bowens (Doe No.1) met on a regular, if not daily
7 basis, with the two she hired and reviewed their "findings" and personally directed them
8 in their 'work', including their 'work' that invaded the Plaintiff's privacy and had no
9 relation whatsoever to the Plaintiff's job or his job performance.

10 40. The Ethics Code, Art. 2, Part 2.0, Section 2.05 (a) requires that : "Board members
11 and employees of the Authority shall comply with the laws of the . . . State of California
12 and the ordinances, codes, rules and regulations of the Authority in the performance of
13 their public duties. . . ." Section 1.17 (a) of the Ethics Code provides: "Whenever in this
14 Code any act or omission is made unlawful, it shall include causing, permitting, aiding or
15 abetting such act or omission." Under these laws, all employees, including Thella Bowens
16 (Doe No.1) and her Vice Presidents and Directors who participated in acts that violated
17 the Ethics Code, whether by requesting them, directing them, condoning them or ratifying
18 them, are "causing, permitting, aiding or abetting" the acts.

19 41. The Plaintiff believed in good faith that LPI was in violation of California Public
20 Contracting laws found in the California Public Contract Code Section 100 et seq. The
21 discovery that LPI had presented false expenses in its bid submission, combined with the
22 unsatisfactory performance of the contract, its failure to submit insurance documents and
23 its lack of business integrity when given time and opportunities to correct its wrongdoing
24 seriously affected the reliability and credibility of the performance of LPI. The final
25 deadline for Maurice Gray to submit a job description that detailed the duties he
26 performed as President of LPI to justify his salary of \$60,000.00 was quickly approaching
27 when Thella Bowens (Doe No.1) made the decision to begin an 'investigation' of the

1 Plaintiff. Bowens wanted Maurice Gray to continue in that position, partly because he
2 was black, and she favored protection of the black employees, but also because she did
3 not want anyone, including the Plaintiff, to speak up and oppose whatever decisions she
4 made, whether they involved misuse of government funds as the Plaintiff believed when
5 he opposed and objected to the leases that cost the Authority millions of dollars for
6 nothing in exchange. Over and over again the Plaintiff voiced his opinions that waste of
7 money occurred when Enarson, with Bowen's approval, failed to consider the budget and
8 its inability to sustain payments when no revenue could be generated from projects
9 improperly negotiated and Bowen's refusal to address those problems. LPI was the last
10 straw for Bowens. The Plaintiff believed that Bowens and her Vice Presidents were using
11 favoritism as a form of corruption in the LPI contract. There is no other "justification"
12 for the timing, the identity of the retaliators, and the secretive and calculated course of
13 conduct that Bowens called for choosing to 'investigate' the Plaintiff at that time.
14 Bowens cannot show independent reasons for her hiring of an 'investigator' that
15 demonstrates clear and convincing evidence that she would have conducted an
16 'investigation' if the Plaintiff had not engaged in protected disclosures or refused to
17 participate in suspected and actual violations of state law governing public contracts.

18 42. The Ethics policies and Code are not uniformly followed, enforced or used by
19 Authority management. The Plaintiff was singled out because he opposed and objected
20 on numerous occasions to the actions of the Authority's President/CEO Thella Bowens
21 and her Vice Presidents when he believed he had reasonable cause to believe that the
22 opposition was necessary to disclose a violation of state statute, or a violation or
23 noncompliance with a state statute, rule or regulation. The Authority, as the Plaintiff's
24 employer, retaliated against the Plaintiff for having exercised his rights under Labor Code
25 section 1102.5(a)(b) (c).

26 43. The conduct of the Defendant Authority and DOES 1 through 20 was a
27 substantial factor in causing the Plaintiff's harm.
28

1 44. As a direct and proximate cause of said acts of harm and conduct described above,
2 Plaintiff has been and continued to be subjected to shame, humiliation and extreme
3 emotional distress, all to the Plaintiff's damage in a sum as yet undetermined, and
4 Plaintiff requests leave of court to state such damages in accordance with proof at trial.

5 45. As a direct and proximate cause of said acts of harm and conduct against the
6 Plaintiff by Defendants and DOES 1 through 20 the Plaintiff has lost standing in his
7 community, been held up to ridicule and shame, suffered great mental and emotional
8 distress, worry, fear of his economic future and depression, all to the Plaintiff's damage in
9 a sum that cannot be computed at this time, and the Plaintiff requests leave to amend this
10 complaint to state these damages in accordance with proof at trial.

11
12 **THIRD CAUSE OF ACTION**
13 **(Violation of the Right to Privacy)**
14 **(Against All Defendants)**

15 46. Plaintiff incorporates paragraphs 1 through 7 of the Facts Common to all Causes
16 of Action and paragraphs 8 through 45 of the Plaintiff's First Cause of Action and
17 paragraphs 34-44 of the Second Cause of Action as though fully set forth herein.

18 47. Thella Bowens (Doe No.1) hired an attorney from LUCE FORWARD and he
19 hired an investigator to supposedly look into "allegations" of violations of the Ethics
20 policy and Code by the Plaintiff. There is nothing in either the Ethics policy or the Ethics
21 Code of the Authority that invites intrusion into the private life of the Plaintiff, including
22 "investigating" anything in regard to his marriage. The Plaintiff's private life, including
23 his marriage, has nothing to do with his job duties, his job position or any matter that is of
24 any concern to the Authority or to Thella Bowens personally. The attorney from LUCE
25 FORWARD hired by Thella Bowens and the investigator hired by the attorney from
26 LUCE FORWARD are both subject to the Authority's Ethics policies and to the Ethics

1 Code of the Authority, as both were hired by Thella Bowens on behalf of the Authority as
2 consultants to her and the officers of the Authority with whom she shared the decision
3 making of the 'investigation.' In addition, Thella Bowens and all of those with whom she
4 shared the 'investigation' responsibilities were and are charged with knowledge of the
5 Ethics policies and Ethics Code of the Authority and as so charged knowingly with the
6 actions of intrusion committed by them individually and in the dual capacity of their job
7 duties on behalf of the Authority.

8 48. The Plaintiff had a reasonable expectation of privacy in regard to his marriage.
9 The interrogation of witnesses as to their observations, personal knowledge or opinions
10 regarding the Plaintiff's marriage, including communication within his marriage, the
11 manner of communication between the Plaintiff and his wife, the appearance of the
12 marriage to outsiders, and any other matters that the attorney for LUCE FORWARD and
13 his hired investigator made regarding the Plaintiff's marriage from witnesses who were
14 being interviewed regarding an 'investigation' whose subject matter had not been
15 revealed to the Plaintiff was intentionally intruded in by the hired help of the Authority.
16 The intrusion of the Authority's 'consultants' and the stated discussion regarding the
17 findings of the 'consultants' with the Authority management on a regular basis that
18 included findings of the interrogation of witnesses on the subject of the Plaintiff's
19 marriage was highly offensive to the Plaintiff and would be highly offensive to a
20 reasonable person.

21 49. The investigator hired by the attorney from LUCE FORWARD also intruded into
22 the Plaintiff's privacy by coercing the owner of the car repair shop (where the Plaintiff
23 had his car repaired) to hand over copies of car repair records and invoices showing
24 payment of the car repairs. The owner immediately contacted the Plaintiff to explain that
25 the investigator told him he was hired by the Authority to look into the Plaintiff's records
26 and threatened him with legal proceedings if he did not immediately turn over the records
27 to him. The owner protested and opposed the demand but was coerced into providing the
28

1 records by the investigator. Neither the Authority, the attorney for LUCE FORWARD or
2 the investigator had sought permission from the Plaintiff to obtain or look at those private
3 records. The Plaintiff was furious at the intrusion into his private affairs without his
4 knowledge or permission. Given the instruction that he could not tell the owner what the
5 circumstances of the invasion into his privacy meant, the Plaintiff was further denied the
6 opportunity to defend himself from the invasion or explain the reason why the
7 investigator had committed this act of intrusion. Once again, the Plaintiff was left in a
8 position of not knowing himself the reason for the 'investigation' and the embarrassment
9 that this investigator could act to further leave the Plaintiff in another position of
10 looking like he had done something wrong when he had not.

11 50. The Plaintiff had a reasonable expectation of privacy in regard to his private
12 vehicle and its repair documents and invoices. The intentional intrusion and false
13 statements used by the investigator hired by the attorney for LUCE FORWARD to obtain
14 the Plaintiff's private records were highly offensive to him and would be highly offensive
15 to a reasonable person. The circumstances surrounding the Authority's intrusion were
16 part of a calculated scheme to find some violation that could "justify" the termination of
17 the Plaintiff because he had made disclosures regarding the Authority's operations and
18 budget that he believed were illegal and would prevent the Plaintiff and others from
19 reporting similar violations by the Authority and allow the Authority to continue to
20 operate in whatever manner it desired to do so regardless of the consequences to the
21 budget of the Authority.

22 51. The Plaintiff did not consent to the Defendant Authority's or Defendants DOES
23 1 through 20's intrusion into either his marriage or the records of his car repair.

24 52. The Plaintiff suffered harm from the Defendant Authority's and Defendants
25 DOES 1 through 20's wrongful intrusion into his private affairs and Defendants' conduct
26 was a substantial factor in causing the Plaintiff harm.

27 53. The Plaintiff suffered severe emotional distress The Defendants' conduct was a
28

1 substantial factor in causing Plaintiff severe emotional distress. As a direct and
2 proximate result of the acts and conduct described above, Plaintiff has been and continues
3 to be subjected to shame, humiliation, and extreme emotional distress, all to the Plaintiff
4 damage in a sum as yet undetermined, and Plaintiff requests leave of court to state such
5 damages in accordance with proof at trial.

6 54. As a direct and proximate cause of said acts of harm and conduct against the
7 Plaintiff by Defendants the Plaintiff has lost standing in his community, been held
8 up to ridicule and shame, suffered great mental and emotional distress, worry, fear of his
9 economic future and depression, all to the Plaintiff's damage in a sum that cannot be
10 computed at this time, and the Plaintiff requests leave to amend this complaint to state
11 those damages in accordance with proof at trial.

12 **FOURTH CAUSE OF ACTION**
13 **(Wrongful Discharge in Violation of Public Policy)**
14 **(Against All Defendants)**

15 55. Plaintiff incorporates paragraphs 1 through 7 of the Facts Common to All Causes
16 of Action and paragraphs 8 through 45 of the First Cause of Action and paragraphs 34 to
17 44 of the Second Cause of Action and paragraphs 46 to 54 of the Third Cause of Action
18 as though fully set forth herein.

19 56. The Plaintiff was discharged from employment for reasons that violate a public
20 policy. The Plaintiff was forced to resign his position from the Authority because he
21 had disclosed in good faith to his own Authority, a government agency, the violations of
22 the Authority regarding its misuse of money, waste of government funds, the violations of
23 law regarding four projects of which he had personal knowledge of the violations of law
24 and rules and regulations that the Authority violated repeatedly.

25 57. The Plaintiff was exercising a statutory right or privilege to disclose the legal
26 violations he in good faith believed were violations and in doing so was reporting to his

1 own agency violations of statutes, rules and regulations that were of paramount public
2 importance. It is well settled in California law that in addition to statutory provisions,
3 valid administrative regulations such as Ethics Code may serve as a source of
4 fundamental public policy because those regulations implement fundamental public
5 policy.

6 58. The Plaintiff absolutely made clear his opposition in private meetings, in public
7 meetings, at open door and closed door meetings to the failure of the Authority
8 to implement the annexation of the space needed to have the women's restroom comply
9 with the ADA requirements and to complete the project at a reasonable cost and in a
10 timely manner. The American Disabilities Act and its enabling statutes and regulations
11 are federal law and federal regulations.

12 59. The Plaintiff made clear to the Vice President to whom he reported that he
13 objected and opposed during the negotiations and the due diligence process that Enarson
14 (Vice President and confidante to Thella Bowens) was not properly understanding the
15 lawful use and conditions of the General Dynamics property that resulted and continues
16 to result in losses of millions of dollars for the Authority. California Public Utilities
17 Code section 170056(f)(1)(2)(3)

18 60. The Plaintiff disclosed and opposed the misuse and waste of the unusable land
19 around the Teledyne Ryan property at Capitol Improvement meetings, at weekly
20 Operations meetings, at Directors meetings and other times. California Public Utilities
21 Code section 170056(a)(1)(B)

22 61. The Plaintiff conducted numerous disclosure meetings with the Vice President
23 to whom he reported regarding the failure of LPI to meet the expenses and conditions that
24 the company had used to bid on the parking operations contract. California Code of
25 Contracts section 1100; section 100. The Plaintiff also met repeatedly with Maurice Gray
26 of LPI and gave him extended help and time to come into compliance on the contract and
27 he failed and refused to do so. This correlated with the idea of conducting an
28

1 'investigation' of the Plaintiff rather than of the contractor.

2 62. The conduct of the Defendants was a substantial factor in causing the Plaintiff's
3 harm.


4 63. As a direct and proximate cause of the acts and conduct described above, Plaintiff
5 has ben and continues to be subjected to shame, humiliation and extreme emotional
6 distress, all to the Plaintiff's damages in a sum as yet undetermined, and Plaintiff requests
7 leave of court to state such damages in accordance with proof at trial.

8 64. As a direct and proximate cause of said acts of harm and conduct against the
9 Plaintiff by Defendants and DOES 1 through 20 the Plaintiff has lost standing in his
10 community, been held up to ridicule and shame, suffered great mental and emotional
11 distress, worry, fear of his economic future and depression, all to the Plaintiff's
12 damage in a sum that cannot be computed at this time, and the Plaintiff requests leave to
13 amend this complaint to state those damages in accordance with proof at trial.

14 WHEREFORE, Plaintiff JOSE HERNANDEZ respectfully prays this court:

- 15 1. For general damages according to proof;
16 2. For attorneys fees and costs on this suit pursuant to CCP Section 1021.5;
17 3. For such other and further relief as the court deems just and proper.

18
19 Dated: December 8, 2006

20 
21 CATHRYN CHINN, Attorney for
22 Plaintiff Jose Hernandez
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

330 W. Broadway, Dept. 75
 San Diego, CA 92101
 619-685-6120

TO:

SANDRA MCDONOUGH #193308
 PAUL PLEVIN, SULLIVAN & CONNAUGHTON LLP
 401 B ST 10TH FLOOR
 SAN DIEGO, CA 92101

JOSE HERNANDEZ

Plaintiff(s)

Case No.: GIC871979

vs.

SAN DIEGO COUNTY REGIONAL AIRPORT
 Defendant(s)

**NOTICE OF
CASE MANAGEMENT CONFERENCE**

Sanctions pursuant to CCP 177.5, 575.2 and CRC 227(b)
 may be imposed for failure to serve this notice.

COUNSEL: CHECK SERVICE LIST. IF YOU HAVE BROUGHT A PARTY INTO THIS CASE WHO IS NOT INCLUDED IN THE SERVICE LIST, Superior Court Rules, Division II, Rule 2.9 REQUIRES YOU TO SERVE THEM WITH A COPY OF THIS NOTICE.

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court and phone number listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>REPORT TO JUDGE</u>
Case Management Conference	04/20/07	01:30PM	RICHARD E. L. STRAUSS

A Case Management Statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial Case Management Conference. (Rule 2.9, CRC Rule 212).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

CERTIFICATE OF SERVICE

I certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego California.

DATED: 01/12/07

BY: CLERK OF THE SUPERIOR COURT

CATHRYN CHINN (P)
 SANDRA MCDONOUGH (D)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

330 W. Broadway, Dept. 75
 San Diego, CA 92101
 619-685-6120

TO:

SANDRA MCDONOUGH #193308
 PAUL PLEVIN, SULLIVAN & CONNAUGHTON LLP
 401 B ST 10TH FLOOR
 SAN DIEGO, CA 92101

JOSE HERNANDEZ

Plaintiff(s)

vs.

S D COUNTY REGIONAL AIRPORT AUTHRT
 Defendant(s)

Case No.: GIC871979

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 CASE MANAGEMENT CONFERENCE**

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 may be imposed for failure to serve this notice.

COUNSEL: CHECK SERVICE LIST. IF YOU HAVE BROUGHT A PARTY INTO THIS CASE WHO IS NOT INCLUDED IN THE SERVICE LIST, Superior Court Rules, Division II, Rule 2.9 REQUIRES YOU TO SERVE THEM WITH A COPY OF THIS NOTICE.

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 All inquiries regarding this notice should be referred to the court and phone number listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>REPORT TO JUDGE</u>
Case Management Conference	04/20/07	10:00AM	RICHARD E. L. STRAUSS
RESCHEDULED from 04/20/07 01:30PM Judge RICHARD E. L. STRAUSS			

A Case Management Statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial Case Management Conference. (Rule 2.9, CRC Rule 212).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

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DATED: 01/19/07

BY: CLERK OF THE SUPERIOR COURT

CATHRYN CHINN (P)
 SANDRA MCDONOUGH (D)

CLERK OF SUPERIOR COURT
CENTRAL DIVISION

F: 2007 JAN 10 P. 2:34

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 FRED M. PLEVIN (SBN 126185)
2 SANDRA L. MCDONOUGH (SBN 193308)
3 ALBERT R. LIMBERG (SBN 211110)
4 PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP
5 401 B Street, Tenth Floor
6 San Diego, California 92101-4232
7 Telephone: 619-237-5200
8 Facsimile: 619-615-0700

9 AMY S. GONZALEZ (SBN 181745)
10 SAN DIEGO COUNTY REGIONAL AIRPORT
11 AUTHORITY
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13 San Diego, CA 92138
14 Telephone: (619) 400-2425
15 Facsimile: (619) 400-2428

16 Attorneys for Defendant
17 SAN DIEGO COUNTY REGIONAL AIRPORT
18 AUTHORITY

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF SAN DIEGO

21 JOSE HERNANDEZ,
22 Plaintiff,

23 v.

24 SAN DIEGO COUNTY REGIONAL
25 AIRPORT AUTHORITY, a public entity;
26 and DOES 1 through 12, inclusive,
27 Defendants.

CASE NO. GIC 871979

NOTICE OF MOTION AND MOTION TO
STRIKE PLAINTIFF'S FIRST AMENDED
COMPLAINT

Date: April 6, 2007
Time: 9:30 a.m.
Dept: 75
Judge: Hon. Richard E. Strauss
Complaint Filed: September 1, 2006
Trial Date: Not Set

EXEMPT FROM FEES
GOVT. CODE § 6103

28 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 6, 2007, at 9:30 a.m., the first available date from the Court, or as soon thereafter as counsel may be heard, in Department 75 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101, defendant San Diego County Regional Airport Authority ("Authority") will and hereby does move to strike

PAUL, PLEVIN,
SULLIVAN &
CONNAUGHTON LLP

NOTICE OF MOTION AND MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED COMPLAINT

1

CASE NO. GIC 871979

1 improper and irrelevant allegations from the First Amended Complaint ("FAC") pursuant to Code
 2 of Civil Procedure section 436(a), as detailed in the table attached to this notice as Exhibit A and
 3 incorporated herein by reference, on the following grounds:

- 4 1. Plaintiff has failed to allege a state or federal law, rule or regulation that the Authority
 5 allegedly violated, as required by Labor Code section 1102.5 (FAC ¶¶ 14, 18, 28, 29, 37
 6 (a-o), 38-42, 56, 57, and 61.);
- 7 2. Plaintiff has failed to allege facts supporting his allegation that he reasonably believed that
 8 the Authority's actions violated a state or federal law, rule or regulation, as required by
 9 Labor Code section 1102.5(b). (FAC ¶¶ 10, 11, 12, 29, 37, 38-39, 49, and 58-59);
- 10 3. Plaintiff has failed to allege that the Authority made or enforced a rule, policy or
 11 regulation that prevented him from disclosing violations of law, as required by Labor
 12 Code section 1102.5(a) (FAC ¶ 38);
- 13 4. Plaintiff has failed to allege that he disclosed certain purported ethical violations (FAC ¶
 14 37);
- 15 5. The Authority is immune from liability for its actions in connection with the investigation
 16 of potential ethics code violations under Government Code sections 821.6 and 815.2(b)
 17 (FAC ¶¶ 23-26, 28, 30, 38, 47-50, and 56-61);
- 18 6. The Authority is immune from liability for its discretionary acts under Government Code
 19 sections 820.2 and 815.2(b) (Complaint ¶¶ 23-26, 28, 30, 38, 47-50, and 56-61);
- 20 7. Plaintiff did not have a reasonable expectation of privacy in his car repair records (FAC ¶
 21 25);
- 22 8. Plaintiff did not have a reasonable expectation of privacy in third parties' observations of
 23 his marital relationship (FAC ¶¶ 26 and 48); and
- 24 9. Plaintiff may not pursue a private right of action for violations of the Authority's internal
 25 ethics code. (Complaint ¶¶ 37-42).

26 This motion is based on this notice and motion, the accompanying memorandum of points
 27 and authorities filed in support of the demurrer and this motion to strike, the entire file in this
 28 ///

1 case, and any other evidence or argument properly considered by the Court in connection with this
2 motion.

3 This Court follows California Rules of Court, Rule 324. The Court will therefore make its
4 tentative ruling available by telephone at (619) 531-3690 the court day before the scheduled
5 hearing at 3:00 p.m., or the tentative ruling may be reviewed on the Court's internet web site
6 (www.sdcourt.ca.gov) after 3:00 p.m. on that same day.

7
8 Dated: January 10, 2007

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

9
10 By: 

FRED M. PLEVIN
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SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY

EXHIBIT A

TABLE OF ALLEGATIONS TO BE STRICKEN FROM THE COMPLAINT

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
Paragraph 6, p. 3, lines 1-5, which reads: "... as well as the San Diego County Regional Airport Authority's Code of Ethics and Conflicts of Interest Code, Article 1, Part 1.1, Section 1.17(a); Article 2, Parts 2.0 to 2.30; Article 3, Part 3.0, Section 3.01; Article 5, Part 5.1. Sections 5.10 to 5.18; San Diego County Regional Airport Authority Policies, Article 2, Part 2.0, Section 2.01 (1)(a)(b)(2) et seq."	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Local rules and internal regulations do not support a cause of action under Labor Code section 1102.5, because they are not <i>state or federal</i> laws, rules or regulations. (Labor Code § 1102.5; see also <i>Patten v. Grant Joint Union High School Dist.</i> (2005) 134 Cal.App.4th 1378, 1384 [the court recognized that the 2003 Amendment to Labor Code section 1102.5, which added that the plaintiff could disclose a violation of a "rule" as a protected activity, made it clear that the alleged violated "rule" must be a "state or federal 'rule'"].)</p>
Para. 10, p. 5, lines 1-11, which reads: "... In the process it was revealed that Enarson had entered into side deals with a handshake agreement with Host that restricted the Operations Division's ability to annex the space which was needed to comply with ADA requirements. The Plaintiff had reasonable cause to believe that the Authority was in violation of the federal American Disabilities Act [sic] and its enabling regulations. Because Enarson refused to either take the space away from Host or renegotiate with them, major modifications had to be made that increased the project budget by over \$2 million. During the long delays women were forced to endure the long lines to use the restrooms. There was no access for the disabled to the restroom for which the Plaintiff also had reasonable cause to believe that the Authority was in violation	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because plaintiff fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the ADA, as required by Labor Code section 1102.5.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	of the equal access provision of the ADA."	
	Paragraph 11, which reads: "The Plaintiff disclosed to members of the Authority Enarson's "side deal" made with out negotiation that restricted the Authority's ability to annex the space needed to comply with ADA requirements for the airport restroom. Plaintiff also disclosed that Enarson's refusal had increased the project budget by over \$2 million. On both counts, Plaintiff believed that he was disclosing legal violations: violations of the ADA requirements and also disclosing the unauthorized use of public assets because Enarson had a "handshake" deal. The project suffered over three (3) years of delays due to Enarson's conflict with the airport's food and beverage concessionaire."	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows: Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because plaintiff fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the ADA, as required by Labor Code section 1102.5.
	Paragraph 12, which reads: "The General Dynamics property is approximately 85 acres and sits along Pacific Coast Highway on the north side of the airport. The property contains a 1,600 parking stall long term parking lot (SAN Park Pacific Highway), and provides for Convention Center truck staging, rental car storage, and Cruise Ship truck staging. The terms of the original three year lease called for rent of \$4.6 million year one, \$6.6 million year two, and \$8.6 million year three. Enarson was the lead negotiator on the lease. When Plaintiff compared the revenue potential of the approximately \$3 million net from the parking operation and \$1 million from the vehicle storage, the lease payments were too expensive and out of line. Plaintiff disclosed that the increased lease payments pulled funds away from the operating budget and he believed it was an unauthorized use of the Authority funds. Plaintiff also believed the failure to	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows: Plaintiff could not have had a reasonable belief that the General Dynamics lease violated a federal or state law because the terms of the lease were authorized by statute. (See Public Utilities Code § 170056(f); Labor Code § 1102.5 [reasonable belief requirement])

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>negotiate the lease properly was a violation of law and contrary to public interest. The Plaintiff had reasonable cause to believe that this failure and other actions related to the lease were unlawful acts that violated California Public Utilities Code section 170056 (f)(1)(2)(3)[.] Plaintiff had reasonable cause to believe that the terms of the lease were in violation of the California Public Utilities Code section 1700056(f)(3) [sic]. Despite the Plaintiff's objections to the actual revenue streams, Enarson decided the matter would go up to the Vice President level, where it died and no corrective action was taken. The lease was signed contrary to the objections of true forms of revenue streams."</p>	
<p>Paragraph 13, which reads: "The Authority's Teledyne Ryan property lease calls for \$3 million in annual payments for the 46.77 acre property, located immediately east of the airport along Harbor Drive. At the time the lease was negotiated, with Enarson as the lead negotiator, contamination of the property allegedly required approximately \$10 million. The failure to properly inspect and analyze the actual contamination resulted in a finding that the contamination remediation range would be approximately \$30 million and would limit the use of the property to the existing 350 space long term parking lot (SAN Park Harbor Drive). Current revenues derived from the parking lot are approximately \$1.2 million a year with about \$700,000.00 in expenses, netting the Authority only \$500,000.00. The original plan for the property was to phase in the parking development from what is now Phase I, 350 parking stalls, to Phase 2, approximately 1,300 stalls. If the project had stayed as planned the property would now be developed and be positioned to take advantage of the increasing occupancy levels in the market. When the development process began</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the referenced statute is in no way connected to the complained-of conduct. (See California Public Utilities Code section 170056(a)(1)(B).) 2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>the discovery of the deep environmental concerns with the property, which were not previously disclosed before Enarson completed the negotiations for the lease, significantly curtailed the purpose of the lease because of the unusable areas. Plaintiff disclosed the findings that there was no way to open Phase 2 of the parking development and also disclosed the enormous amount of money the Authority was paying for the lease. The Plaintiff believed that these acts by the Authority were unlawful and in violation of California Public Utilities Code section 170056(a)(1)(B). Further, the Plaintiff's disclosure of the unlawful acts occurred at committee meetings closed to the public, [sic] at management and staff meetings closed to the public. Plaintiff asked the Authority members, including Enarson, "Why are we paying all this money? Why are we paying the rent?" Enarson replied, "We're obligated to pay the rent." Plaintiff stated that "we can use a little bit, 351 parking stalls, yet we're paying \$3 million and we can't use any of the rest. We're on the hook for the \$30 million. We should only pay a pro rata amount." Enarson's response was that it would get pushed up to the Vice President group. When the Teledyne Ryan transition team, of which the Plaintiff was a member, re-briefed the Vice Presidents, at a second meeting, the members and officers were in awe, and asked, "Are you sure it's \$30 million? Are you kidding me?" Enarson was agitated and Plaintiff received reports that Enarson was angry."</p>	
24 25 26 27 28	<p>Paragraph 14, p. 9, lines 9-22, which reads: "Plaintiff then discovered that LPI was double billing the Authority for Workers Compensation Insurance. He had noted that the premiums were running twice the amount of the previous year and were being billed to a different expense category. As a result Plaintiff</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>posted a credit of approximately \$150,000.00 against LPI's monthly request for reimbursement. Plaintiff had communicated throughout the process and disclosed LPI's wrongdoing and financial misuse issues with his direct supervisor, the Vice President of Airport Operations. The Vice President asked Plaintiff to work out the issues with Grey because he was a Minority Owned Business and the Authority needed the relationship in order to comply with FAA regulations governing Minority participation. Plaintiff had disclosed computational or other errors in LPI's bid submission; the unsatisfactory performance of the contract; the failure of LPI to submit insurance documents acceptable to the Authority; Grey's unjustified refusal to warrant his performance and other offenses and actions that indicated a lack of business integrity by LPI. Plaintiff believed that disclosures he made pursuant to the contract contained violations of the Ethics Code and also of rules and regulations of law."</p>	<p>believes was violated by the LPi contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is to "ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.</p> <p>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</p>
<p>Paragraph 18, which reads: "By October 2005 the Plaintiff had met with the Vice President of Operations to inform the Vice President of Operations of the status of LPI's non-compliance and areas of deficiencies and to obtain agreement that Maurice Gray would step down as President of LPI should he not be able to comply with the standards and improve the deficiencies and clarify his job duties for his position. Pursuant to the California Code of Contracts section 1100, the Authority was required to comply with the California Code of Contracts, section 100(b), which the Plaintiff had reasonable cause to believe was being violated by the Authority. The Authority's</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPi contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Contracts Code, Article 5, sections 5.1(a)(3)(4)(5)(6)(8 and section 5.18(a) were also a basis for the Plaintiff to have reasonable cause of violation by the Authority. The Plaintiff regularly worked with these Codes and regulations and expected the Authority to follow them."</p>	<p>enacting that code is to "ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.</p> <p>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</p> <p>3. Plaintiff may not maintain a private right of action under the Authority's internal contracts code.</p>
<p>Paragraph 23, p. 12, lines 16-24, which reads: "... He was also told specifically that he could not discuss anything related to this interrogation or "the investigation" with anyone else. Under California Labor Code section 1102.5 an employer may not make or enforce any rule or policy preventing an employee from disclosing information to a government agency, including the Authority, where the employer has reasonable cause to believe that the information discloses a violation of state statute, or a violation or noncompliance with a state rule or regulation. The Plaintiff asked the Vice Presidents to clarify the specific charges but they refused to do so."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>2. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).)</p>
<p>Paragraph 24, which reads as follows: "The attorney from LUCE FORWARD and his hired investigator then began to contact various people of the Plaintiff's acquaintance.</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>1 These witnesses immediately contacted the</p> <p>2 Plaintiff to complain about the hostile, rude</p> <p>3 and demanding treatment of the attorney from</p> <p>4 LUCE FORWARD and the Plaintiff informed</p> <p>5 each witness that he was unable to discuss</p> <p>6 anything regarding the matter, but all of the</p> <p>7 contacting witnesses reported similar</p> <p>8 unprofessional treatment and reported their</p> <p>9 own conversations and attempts at</p> <p>10 conversation with the lawyer from LUCE</p> <p>11 FORWARD. The lawyer seemed to be fishing</p> <p>12 to find anything he could about the Plaintiff</p> <p>13 that might put him in a negative light, and by</p> <p>14 all accounts he seemed to be failing. The</p> <p>15 lawyer from LUCE FORWARD was reduced</p> <p>16 to "suggesting" various scenarios to the</p> <p>17 witnesses, some of whom laughed at the</p> <p>18 lawyer and concluded he was engaged in a</p> <p>19 "witch hunt" to do harm to the Plaintiff. The</p> <p>20 Plaintiff, unable to respond and tell the</p> <p>21 contacting witnesses anything, was unable to</p> <p>22 defend himself. The Plaintiff knew what</p> <p>23 Thella Bowens (Doe No.1) was doing to him</p> <p>24 and why she was doing it but could not</p> <p>25 disclose anything about it."</p>	<p>and irrelevant allegations as follows:</p> <p>1. The Authority is immune for its actions</p> <p>taken in connection with an investigation.</p> <p>(See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>2. The Authority is immune from liability for</p> <p>its discretionary acts. (See Gov. Code §§</p> <p>820.2 and 815.2(b).)</p>
<p>18 Paragraph 25, which reads as follows: "As the</p> <p>19 attorney for LUCE FORWARD became more</p> <p>20 desperate to find some wrong doing from</p> <p>21 people who did not want to see the Plaintiff</p> <p>22 harmed, he utilized the Private Investigator to</p> <p>23 go after tangential subjects and try to get some</p> <p>24 "hard evidence" that the Plaintiff had done</p> <p>25 something, anything, wrong. The attorney for</p> <p>26 LUCE FORWARD sent the investigator over</p> <p>27 to the car repair place the Plaintiff used and</p> <p>28 threatened and coerced the owner to give him</p> <p>copies of the repair bills for the Plaintiff's car.</p> <p>The investigator specifically represented</p> <p>himself as working for the Authority and not</p> <p>for LUCE FORWARD. The Plaintiff had</p> <p>never been asked to produce these car repair</p> <p>bills and did not give his permission to the</p>	<p>This paragraph is subject to a motion to strike</p> <p>under California Code of Civil Procedure</p> <p>section 436(a) because it contains improper</p> <p>and irrelevant allegations as follows:</p> <p>1. The Authority is immune for its actions</p> <p>taken in connection with an investigation.</p> <p>(See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>2. The Authority is immune from liability for</p> <p>its discretionary acts. (See Gov. Code §§</p> <p>820.2 and 815.2(b).)</p> <p>3. Seeking information regarding plaintiff's</p> <p>car repairs is not an unreasonable invasion of</p> <p>privacy.</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>owner of the repair place to give them to the investigator or to anyone else. The investigator produced the documents in front of the attorney for LUCE FORWARD and in front of the Plaintiff. The investigator and the attorney for LUCE FORWARD refused to say where they had obtained them. In fact, it was the witness, who called the Plaintiff and told him about the incident. The car repair bills yielded no evidence of wrong doing by the Plaintiff."</p>	
<p>Paragraph 26, which reads as follows: "Next the attorney for LUCE FORWARD questioned witnesses about what they knew about the Plaintiff's marriage, including whether they had observed "communication" problems in the marriage. The witnesses quickly defended the Plaintiff's marriage and quickly informed the Plaintiff of the attorney's specific invasion into the Plaintiff's marriage and informed him that it was a great marriage and asked the Plaintiff why this attorney was asking questions that had nothing to do with the Plaintiff's job and were also none of his business."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 2. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).) 3. Questioning third party witnesses regarding their observations of plaintiff and his wife is not an unreasonable invasion into plaintiff's privacy.
<p>Paragraph 28, which reads as follows: "Plaintiff then pointed out his points of concern to the former Vice President: (1) the ambiguousness of the "Conflict of Interest" Code, and (2) more importantly, the application of the policy among Authority employees. The Plaintiff mentioned the specific abuse of the policy from the Authority Vice Presidents, Board Members, and the President/CEO Thella Bowens (Doe No.1) This included airline ticket changes, upgrades, access to First Class lounges and other routinely-demanded expensive privileges not allowed to other Authority employees. The</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 2. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).) 3. Plaintiff has not set forth a state or federal

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Plaintiff pointed out to the Vice President that the application of the "Conflict of Interest" Code policy was selective and unfairly enforced. SDCRAA Code of Ethics Article 2, part 2 et.seq."</p>	<p>law, rule, or regulation that he believes was violated by the Authority, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</p> <p>4. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 29, which reads as follows: "The Plaintiff had discussed such items as the above-stated violations of the Authority's policy with the former Vice President when he had been the Vice President and the Plaintiffs supervisor and he had always seen no reason for concern, and no action had been taken. This same former Vice President had himself directed the Plaintiff to take care of tickets for Authority employees and Board Members. The Plaintiff asked why it was okay for Thella Bowens (Doe No.1) to ask and receive favors and not okay for employees to receive the same benefits. One example was Bowen's request to fly in BBQ meat from Texas. The former Vice President defended this practice as approved as an "Accepted Industry Practice", which connotes that among the Regional Airport Authority for the Counties paying to fly in meat from another state is a billable expense. SDCRAA Code of Ethics Article 2, section 2.10 (d)(9)(A)(B)."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Authority, as required by Labor Code section 1102.5. (Labor Code § 1102.5) 2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].) 3. Plaintiff has not alleged that he reasonably believed that these actions were a violation of law, as required by Labor Code section 1102.5. 4. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 30, which reads: "The former Vice President then told the Plaintiff that the Authority could no longer trust his judgment and they are "forced to discontinue working relations." His "choice" was to sign a resignation or they would terminate him.</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. The Authority is immune for its actions

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>When the former Vice President, now Chief of Staff to Thella Bowens (Doe No.1), asked the Plaintiff for final comments he told him his opinion as to the unfairness of the 'investigation' and the lack of professionalism on the part of the 'hired help' (the lawyer from LUCE FORWARD and the 'investigator' he hired). The Plaintiff stated that the outcome of the investigation had already been pre-determined and that the 'investigators' were not impartial and did not let the 'truth come out.' The Plaintiff asked the following questions, all of which went unanswered: How did this 'investigation' come about? Why were the allegations made against him never explained? Why was the reasoning behind being placed on administrative leave never disclosed? Am I the only person being 'investigated' or are there others? What authority was given to the 'investigators' to allow them to invade my privacy and procure privileged information? The former Vice President's last comment to the Plaintiff was: 'Holy shit, I knew something like this would happen as part of the reorganization.'"</p>	<p>taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>2. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).)</p>
<p>Paragraph 37(a), which reads: "The Vice President of Operations paid \$1200.00 for a ticket on an airline to get Blue Bell ice cream for Thella Bowen's BBQ, received reimbursement for the travel expense under the guise that he was attending a cultural awareness development meeting with another airline. The ice cream was available in Southern California. When word got around the Authority about the cost of going to Texas for ice cream, the Vice President directed the Plaintiff to "shut that little shit up" referring to the budget analyst who continued to comment on it. The Plaintiff refused the directive. This travel expense was not reasonably related to a governmental purpose." [hereinafter "Blue Bell Transaction"]</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Blue Bell transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. Plaintiff has not set forth any violation of the Authority's internal ethics code.</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>3. Plaintiff has not alleged that he disclosed this Blue Bell Transaction, or that he reasonably believed this Blue Bell Transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff also has not sufficiently alleged that he refused to perform an activity that would result in a violation of state or federal law, rule, or regulation, as required by Labor Code section 1102.5(c).</p> <p>5. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</p> <p>6. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 37(b), which reads: "Each time an Authority employee requested a change to be made to an airline ticket a benefit was accepted when the recipient took "any action exercising control over the benefit." Thella Bowen would purchase her own tickets and then request date changes and upgrades, along with Premier Lounge Access (only permitted for airline premier club members). This practice was so prevalent by Bowens and her staff that on the day that the investigation of the Plaintiff began, Bowens had secured access to an airline Premier lounge prior to her trip to Asia. Any change to any ticket itinerary is approximately fifty to one hundred dollars, a service charge, plus the cost in set price for an upgrade on a</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by these transactions, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>ticket, ranging from one hundred fifty to two hundred dollars each way. Thella Bowens routinely instructed her Assistant to contact either the Plaintiff or the Vice President that the Plaintiff reported to, to make the changes described above. The Plaintiff would make the changes for Bowen by going directly to the airline Station Manager and requesting the change for Thella Bowens. The Plaintiff performed this benefit accommodation more than thirty times for Bowen and her staff. All of these requested benefits were in violation of the Ethics policy."</p>	<p>reasonably believed these Transactions were a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>3. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 37(c), which reads: "Each year Thella Bowens requested an employee BBQ named "Thella's BBQ." The event drew from fifty to over three hundred attendees. The centerpiece of the event called for pork, beef ribs and brisket to be flown out from her favorite restaurant in the Dallas Fort Worth area, Angelo's. Employees from the Director level and above were required to pay money to help subsidize the expense of the meat. Currently Thella's BBQ has been renamed the "Annual Employee Appreciation Employees BBQ" and now costs approximately ten to fifteen thousand dollars, not including the cost of the labor for the Authority employees who are designated to support the event. The Plaintiff was then instructed to contact an airline to make arrangements at her behest for free airline delivery of the meat. The net weight of the total delivery was over two hundred pounds at an approximate cost of \$2500.00. The free airline flight of the meat violated the Ethics policy. The cost of the BBQ comes from the revenue collected by the Authority from the airlines and its users."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the BBQ, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5. 2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code. 3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b). 4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c). 5. Plaintiff may not maintain a private right of

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	action under the Authority's internal ethics code.
<p>Paragraph 37(d), which reads: "Thella Bowens requested through a Vice President that he obtain special airline flight privileges for her sister who lives in Texas. Bowens asked for the ability to get either stand by or reduced rate tickets for her sister for business and personal travel. The request was made to the airline Station Manager. The airline Station Manager then responded to the conditions under which they could do it. This request by Thella Bowens (Doe No.1) violates the Ethics Code."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's "rules and regulations" are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5. 2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code. 3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b). 4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c). 5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 37(e), which reads: "The request from the Chairman of the Board of the Authority to secure First Class upgrade airline tickets on the day of his planned departure for his wife and himself required the intervention of the airline Station Manager. This tactic allowed the Chairman of the Board of the</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Authority to save approximately two hundred fifty dollars for the upgrade expenses. This action violates the Ethics Code."</p>	<p>violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 37(f), which reads: "The Chairman of the Board of the Authority on several occasions requested to enter into a temporary lease to use a portion of the parking lot at Harbor Island for no expense for an activity he is involved with annually. The lease of Authority property for non-aviation use is strictly prohibited and a violation of the Ethics Code as well as other laws and regulations."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 37(g), which reads: An Authority Board member annually inserts his official authority to influence negotiations between a community event and the rental of the General Dynamics property at a rate lower than the fair market value. As a condition of this use, all rental cars must be removed from the property and a large amount of vehicles relocated from the property. This violates the Ethics Code as well as other laws and regulations.</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>perform this directive, as required by Labor Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 37(h), which reads: "An Authority Board member requested assistance in rearranging his itinerary so that he could attend the Little League World Championships in Williamsport, Pennsylvania. The Plaintiff had to work with three different airlines to coordinate the First Class upgrade the Board member requested, as well as the time changes to allow the Authority Board member his desired schedule. This violates the Ethics Code."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5. 2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code. 3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b). 4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c). 5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 37(I), which reads: "The Authority's Vice President of Budget and Finance repeatedly requested from the Plaintiff</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>assistance in changing flight schedules. Over a one year period the Plaintiff assisted with the change of approximately fifteen to twenty schedules, all to accommodate personal and non Authority business travel to Las Vegas and Texas. This violates the Ethics Code."</p>	<p>and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5. 2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code. 3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b). 4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c). 5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 37(j), which reads: "The General Counsel of the Authority used his official position to obtain fifty-yard-line premier seating at the Poinsettia Bowl football game by getting the Plaintiff to use his official position as Director, Landside Operations to make contact with the Holiday Bowl Committee and request premium seating for the event. This involved securing six tickets for \$300.00, which the Plaintiff paid for so that the General Counsel had to reimburse the Plaintiff. When the Holiday Bowl Committee member asked the Plaintiff if the tickets were complimentary</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by these transactions, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>for no charge the Plaintiff refused the gift and paid for them. The General Counsel knew he was in violation of the Ethics Code when he made the request for the favors from the Plaintiff. After the Plaintiff filed his Claim with the Airport Authority, the General Counsel wrote to the Plaintiff that "the facts about me are false, misleading, defamatory, slanderous, libelous" because the number of tickets he requested was six, not eight, and the price he paid for the tickets was \$300.00 not \$400.00. He then threatened to pursue legal action against the Plaintiff for "filing a false defamatory accusation against [him]" because "Mr. Hernandez had volunteered to pick up the tickets since he already had plans to visit the ticket the ticket [sic] location", a statement which is untrue. The General Counsel's threat is an additional and separate violation of the Ethics Code."</p>	<p>section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed these transactions were a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p> <p>6. A plaintiff must be an employee at the time of the alleged disclosure and retaliation act. (See <i>Edwards v. Arthur Andersen LLP</i> (2006) 142 Cal.App.4th 603.)</p>
<p>Paragraph 37(k), which reads: "The Plaintiff was present with the Vice President of Operations when the Chairman of the Board of the Authority requested a contractor to be hired to re-survey his Authority office space for "listening devices." The Chairman's office space had previously on two separate occasions been surveyed for "bugging devices" or other "listening apparatus." The Chairman was worried that his communications could be intercepted by the FBI or similar such agencies. This contract request is a gross waste of the Authority funds."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed this alleged violation, or that he reasonably</p>

1	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
2		
3		believed this transaction was a violation of a
4		state or federal law, rule or regulation, as
5		required by Labor Code section 1102.5(b).
6		4. Plaintiff did not allege that he refused to
7		perform this directive, as required by Labor
8		Code section 1102.5(c).
9		5. Plaintiff may not maintain a private right of
10		action under the Authority's internal ethics
11		code.
12	Paragraph 37(l), which reads: "The Vice	This paragraph is subject to a motion to strike
13	President of Budget and Finance, representing	under California Code of Civil Procedure
14	himself and Thella Bowens as Board members	section 436(a) because it contains improper
15	of the Jackie Robinson YMCA, requested that	and irrelevant allegations as follows:
16	the Plaintiff secure a free round trip airline	1. Plaintiff has not set forth a state or federal
17	ticket for the owner of national basketball	law, rule, or regulation that he believes was
18	team. The request was made so that the owner	violated by this transaction, as required by
19	could be the featured speaker at a banquet."	Labor Code section 1102.5. (Labor Code §
20		1102.5)
21		2. The facts as alleged do not demonstrate a
22		violation of the Authority's internal ethics
23		code.
24		3. Plaintiff has not alleged that he disclosed
25		this alleged ethical violation, or that he
26		reasonably believed this transaction was a
27		violation of a state or federal law, rule or
28		regulation, as required by Labor Code section
		1102.5(b).
		4. Plaintiff did not allege that he refused to
		perform this directive, as required by Labor
		Code section 1102.5(c).
		5. Plaintiff may not maintain a private right of
		action under the Authority's internal ethics
		code.
	Paragraph 37(m), which reads: "The Vice	This paragraph is subject to a motion to strike

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	President of Operations with the full knowledge of Thella Bowens, requested that the Plaintiff secure free round trip airline tickets to be donated as the featured prizes of the annual United Way campaign. The Plaintiff did this twice."	<p>under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) 2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code. 3. Plaintiff has not alleged that he disclosed this alleged ethical violation, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b). 4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c). 5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
20 21 22 23 24 25 26 27 28	<p>Paragraph 37(n), which reads as follows: "Thella Bowens requested from the Plaintiff that a marked reserved parking stall be designated in the employee parking lot at the Commuter Terminal for her personal use. Bowens then never used the stall, choosing to park elsewhere and she reassigned the stall to the Vice President of Budget and Finance. That particular reserved parking staff is clearly marked for use only by the President/CEO of the Airport Authority. The designation of the parking stall to the Vice President of Budget and Finance clearly connotes preferential treatment and is a violation of Airport</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's "rules and regulations" are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Authority rules and regulations.”</p>	<p>2. The facts as alleged do not demonstrate a violation of the Authority’s internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed these transactions were a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority’s internal ethics code.</p>
<p>Paragraph 37(o), which reads: “The Vice President of Operations instructed the Plaintiff to use his position as Director of Landside Operations to secure a limousine from one of the Airport’s service providers to be used as part of the procession for a colleague’s wife’s funeral.”</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority’s internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority’s internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed this alleged ethical violation, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 38, p. 22, lines 1-23, which reads: "The Plaintiff attempted, time and time again, to bring to the attention of the attorney from LUCE FORWARD the above-stated Ethics violations and every single time the attorney from LUCE FORWARD interrupted and spoke over the Plaintiff to prevent the Plaintiff from reporting violations, both legal and ethical, that he was aware of and had not been 'investigated.' The attorney was not interested in knowing about the above-stated violations or any incident that did not show wrongdoing by the Plaintiff. The Plaintiff did his best to report, disclose, divulge and bring to the attention of his employer's 'investigator' (the attorney from LUCE FORWARD) facts and information relative to both suspected and actual violations of state law directly related to his job. The Plaintiff observed improper governmental activity by employees of the Authority undertaken in the performance of the employee's official duties that demonstrated economic waste, incompetency and inefficiency. The 'investigator' Thella Bowens hired (the lawyer from LUCE FORWARD) attempted to use and used, both directly and indirectly, intimidating, threatening, coercing, and commanding tactics to influence the information he was told by the Plaintiff and by the witnesses during their interviews. Thella Bowens could not have reasonably believed that taking personnel action, including hiring and directing an 'investigation' into the</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Authority's acts, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. Plaintiff has not alleged that the Authority made, adopted or enforced a rule, regulation, or policy, as required by Labor Code section 1102.5(a), that prevented him from disclosing alleged improprieties.</p> <p>3. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>4. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Plaintiff's alleged but not articulated violations of the Authority's Ethics policy was and is justified based on her own and her direct report employees' own well-know [sic] violations of the same policies and Codes. Bowens was well aware that the evidence of her own violations were known to the Plaintiff and when he reported those violations to her hired 'investigator' he was cut off and told not to discuss them. Other witnesses also disclosed to Bowen's 'investigator' knowledge of Bowne's [sic] wrongdoing as well as the Ethics violations by her Vice Presidents that Bowens condoned and ratified."</p>	
<p>Paragraph 39, p. 23, line 26 through p. 24, line 6, which reads: "... The first disclosure arose from the Plaintiff's opposition to a "side deal" that Bryan Enarson made with a concessionaire at the airport, Host, that restricted the Authority's ability to annex the space needed to comply with ADA requirement for the women's restroom at the airport.. [sic] The result of Enarson's actions increased the project budget by over \$2 million. The Plaintiff believed this resulted in legal noncompliance with the ADA requirements which were well settled at that time and took precedence over the handshake agreement Enarson made without negotiation with Host."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. But Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the ADA, as required by Labor Code section 1102.5. 2. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 39, p. 24, lines 7-11, which reads: "The second disclosure also arose from events involving Enarson, who was the lead negotiator on behalf of the Airport for the</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>property known as the General Dynamics property. Enarson proceeded with the negotiations without ascertaining the extent of the "public hazards around the airport" and resulted in a lease agreement that loses millions of dollars per year for the Authority."</p>	<p>and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff could not have had a reasonable belief that the General Dynamics lease violated a federal or state law because the terms of the lease were authorized by statute. (See Public Utilities Code § 170056(f); Labor Code § 1102.5 [reasonable belief requirement]) 2. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 39, p. 24, lines 12-16, which reads: "The third disclosure involved the misuse and waste of the usable land around the property known as the Teledyne Ryan property. Enarson proceeded with the negotiations without ascertaining the extent of the "public hazards around the airport" and that resulted in a lease agreement that loses millions of dollars per year for the Authority. Enarson then blocked open discussion of the problem and no resolution has been attempted."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the referenced statute is in no way connected to the complained of conduct. (See California Public Utilities Code section 170056(a)(1)(B); Labor Code § 1102.5) 2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].) 3. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 39, p. 24, lines 17-19, which reads: "The fourth and final disclosure encompassed the issue of the contract bid by the Lindbergh</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper</p>

1	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING
2		ALLEGATION FROM COMPLAINT
3	Parking, Inc. (LPI) and its failure to meet its	and irrelevant allegations as follows:
4	contract expectations and the offenses and	1. Plaintiff has not set forth a state or federal
5	actions by the LPI that indicate a lack of	law, rule, or regulation that he reasonably
6	business integrity."	believes was violated by the LPI contract, as
7		required by Labor Code section 1102.5.
8		(Labor Code § 1102.5) Even if Plaintiff's
9		reference to the "California Code of
10		Contracts" is meant to refer to the California
11		Public Contract Code, his claim still fails.
12		Section 100(b) of the Public Contract Code
13		merely states the legislature's intent in
14		enacting that code is to "ensure full
15		compliance with competitive bidding statutes
16		as a means of protecting the public from
17		misuse of public funds." None of Plaintiff's
18		alleged disclosures could reasonably be
19		interpreted as a disclosure of a "violation" of
20		this statement of legislative intent.
21		2. A republication of publicly known
22		information or findings does not support a
23		Labor Code section 1102.5 claim because the
24		plaintiff is not "making known" the violations
25		of law. (See Labor Code § 1102.5(b); See e.g.
26		<i>Holmes v. General Dynamics Corp.</i> (1993) 17
27		Cal.App.4th 1418, 1433 [analyzing meaning
28		of "disclosure" under wrongful termination in
		violation of public policy doctrine].)
		3. Plaintiff may not maintain a private right of
		action under the Authority's internal ethics
		code.
23	Paragraph 39, p. 24, line 20 through p. 25, line	This paragraph is subject to a motion to strike
24	9, which reads: "The Plaintiff believes it was	under California Code of Civil Procedure
25	the personal relationship of the President/CEO	section 436(a) because it contains improper
26	of the Authority, Thella Bowens (Doe No.1)	and irrelevant allegations that do not support
27	who has shown favoritism, partiality and a	any cause of action alleged by plaintiff.
28	refusal to hold those of the same minority race	1. Plaintiff may not maintain a private right of
	as herself to the same accountability as the	action under the Authority's internal ethics
	Ethics Code and other laws and regulations	
	require. Besides Enarson, who is white, and a	

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>premier kiss ass, Bowens has never applied the same policy standards to herself or to her Vice Presidents who are black. Maurice Gray is black and is the beneficiary of not having to comply with the standards and requirements that other Authority contractors have been held to. By eliminating the Plaintiff from his job she has assured that no one else surrounding her at the high management levels will speak up or oppose whatever it is she desires to do, both personally and in her job position. Thella Bowens (Doe No.1) made it clear through the attorney she hired from LUCE FORWARD and through the investigator the attorney hired that she alone would make the determinations as to conclusions and findings of the two. Bowens (Doe No.1) met on a regular, if not daily basis, with the two she hired and reviewed their "findings" and personally directed them in their 'work', including their 'work' that invaded the Plaintiff's privacy and had no relation whatsoever to the Plaintiff's job or his job performance."</p>	<p>code.</p> <p>2. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>3. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).)</p>
<p>Paragraph 41, which reads: "The Plaintiff believed in good faith that LPI was in violation of California Public Contracting laws found in the California Public Contract Code Section 100 et seq. The discovery that LPI had presented false expenses in its bid submission, combined with the unsatisfactory performance of the contract, its failure to submit insurance documents and its lack of business integrity when given time and opportunities to correct its wrongdoing seriously affected the reliability and credibility of the performance of LPI. The final deadline for Maurice Gray to submit a job description that detailed the duties he performed as President of LPI to justify his salary of \$60,000.00 was quickly approaching when Thella Bowens (Doe No.1) made the decision to begin an 'investigation' of the Plaintiff. Bowens wanted Maurice Gray to</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is "ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Plaintiff's alleged disclosures</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>continue in that position, partly because he was black, and she favored protection of the black employees, but also because she did not want anyone, including the Plaintiff, to speak up and oppose whatever decisions she made, whether they involved misuse of government funds as the Plaintiff believed when he opposed and objected to the leases that cost the Authority millions of dollars for nothing in exchange. Over and over again the Plaintiff voiced his opinions that waste of money occurred when Enarson, with Bowen's approval, failed to consider the budget and its inability to sustain payments when no revenue could be generated from projects improperly negotiated and Bowen's refusal to address those problems. LPI was the last straw for Bowens. The Plaintiff believed that Bowens and her Vice Presidents were using favoritism as a form of corruption in the LPI contract. There is no other "justification" for the timing, the identity of the retaliators, and the secretive and calculated course of conduct that Bowens called for choosing to 'investigate' the Plaintiff at that time. Bowens cannot show independent reasons for her hiring of an 'investigator' that demonstrates clear and convincing evidence that she would have conducted an 'investigation' if the Plaintiff had not engaged in protected disclosures or refused to participate in suspected and actual violations of state law governing public contracts."</p>	<p>could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.</p> <p>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</p> <p>3. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p> <p>4. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>5. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).)</p>
<p>Paragraph 42, which reads: "The Ethics policies and Code are not uniformly followed, enforced or used by Authority management. The Plaintiff was singled out because he opposed and objected on numerous occasions to the actions of the Authority's President/ CEO Thella Bowens and her Vice Presidents when he believed he had reasonable cause to believe that the opposition was necessary to disclose a violation of state statute, or a</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the Authority's conduct, as required by Labor Code section</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>violation or noncompliance with a state statute, rule or regulation. The Authority, as the Plaintiff's employer, retaliated against the Plaintiff for having exercised his rights under Labor Code section 1102.5(a)(b) (c)."</p>	<p>1102.5. (Labor Code § 1102.5)</p> <p>2. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p> <p>3. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>4. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).)</p>
<p>Paragraph 47, which reads: "Thella Bowens (Doe No.1) hired an attorney from LUCE FORWARD and he hired an investigator to supposedly look into "allegations" of violations of the Ethics policy and Code by the Plaintiff. There is nothing in either the Ethics policy or the Ethics Code of the Authority that invites intrusion into the private life of the Plaintiff, including "investigating" anything in regard to his marriage. The Plaintiff's private life, including his marriage, has nothing to do with his job duties, his job position or any matter that is of any concern to the Authority or to Thella Bowens personally. The attorney from LUCE FORWARD hired by Thella Bowens and the investigator hired by the attorney from LUCE FORWARD are both subject to the Authority's Ethics policies and to the Ethics Code of the Authority, as both were hired by Thella Bowens on behalf of the Authority as consultants to her and the officers of the Authority with whom she shared the decision making of the 'investigation.' In addition, Thella Bowens and all of those with whom she shared the 'investigation' responsibilities were and are charged with knowledge of the Ethics policies and Ethics Code of the Authority and as so charged knowingly with the actions of intrusion</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).)</p> <p>2. The Authority is immune from liability for its discretionary acts. (See Gov. Code § 820.2 and 815.2(b).)</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>committed by them individually and in the dual capacity of their job duties on behalf of the Authority."</p>	
<p>Paragraph 48, which reads: "The Plaintiff had a reasonable expectation of privacy in regard to his marriage. The interrogation of witnesses as to their observations, personal knowledge or opinions regarding the Plaintiff's marriage, including communication within his marriage, the manner of communication between the Plaintiff and his wife, the appearance of the marriage to outsiders, and any other matters that the attorney for LUCE FORWARD and his hired investigator made regarding the Plaintiff's marriage from witnesses who were being interviewed regarding an 'investigation' whose subject matter had not been revealed to the Plaintiff was intentionally intruded in by the hired help of the Authority. The intrusion of the Authority's 'consultants' and the stated discussion regarding the findings of the 'consultants' with the Authority management on a regular basis that included findings of the interrogation of witnesses on the subject of the Plaintiff's marriage was highly offensive to the Plaintiff and would be highly offensive to a reasonable person."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 2. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).) 3. Questioning third party witnesses regarding their observations of plaintiff and his wife is not an unreasonable invasion into plaintiff's privacy.
<p>Paragraph 49, which reads: "The investigator hired by the attorney from LUCE FORWARD also intruded into the Plaintiff's privacy by coercing the owner of the car repair shop (where the Plaintiff had his car repaired) to hand over copies of car repair records and invoices showing payment of the car repairs. The owner immediately contacted the Plaintiff to explain that the investigator told him he was hired by the Authority to look into the Plaintiff's records and threatened him with legal proceedings if he did not immediately turn over the records to him. The owner protested and opposed the demand but was</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 2. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).) 3. Plaintiff did not have a reasonable

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>coerced into providing the records by the investigator. Neither the Authority, the attorney for LUCE FORWARD or the investigator had sought permission from the Plaintiff to obtain or look at those private records. The Plaintiff was furious at the intrusion into his private affairs without his knowledge or permission. Given the instruction that he could not tell the owner what the circumstances of the invasion into his privacy meant, the Plaintiff was further denied the opportunity to defend himself from the invasion or explain the reason why the investigator had committed this act of intrusion. Once again, the Plaintiff was left in a position of not knowing himself the reason for the 'investigation' and the embarrassment that this investigator could act to further leave the Plaintiff in another position of looking like he had done something wrong when he had not."</p>	<p>expectation of privacy regarding his car repair records.</p>
<p>Paragraph 50, which reads: "The Plaintiff had a reasonable expectation of privacy in regard to his private vehicle and its repair documents and invoices. The intentional intrusion and false statements used by the investigator hired by the attorney for LUCE FORWARD to obtain the Plaintiff's private records were highly offensive to him and would be highly offensive to a reasonable person. The circumstances surrounding the Authority's intrusion were part of a calculated scheme to find some violation that could "justify" the termination of the Plaintiff because he had made disclosures regarding the Authority's operations and budget that he believed were illegal and would prevent the Plaintiff and others from reporting similar violations by the Authority and allow the Authority to continue to operate in whatever manner it desired to do so regardless of the consequences to the</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 2. The Authority is immune from liability for its discretionary acts. (See Gov. Code § 820.2.) 3. Plaintiff did not have a reasonable expectation of privacy regarding his car repair records.

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
budget of the Authority."	
<p>Paragraph 56, which reads: "The Plaintiff was discharged from employment for reasons that violate a public policy. The Plaintiff was forced to resign his position from the Authority because he had disclosed in good faith to his own Authority, a government agency, the violations of the Authority regarding its misuse of money, waste of government funds, the violations of law regarding four projects of which he had personal knowledge of the violations of law and rules and regulations that the Authority violated repeatedly."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the Authority's acts, as required by Labor Code section 1102.5. (Labor Code § 1102.5) 2. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 3. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 815.2(b).) 4. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
<p>Paragraph 57, which reads: "The Plaintiff was exercising a statutory right or privilege to disclose the legal violations he in good faith believed were violations and in doing so was reporting to his own agency violations of statutes, rules and regulations that were of paramount public importance. It is well settled in California law that in addition to statutory provisions, valid administrative regulations such as Ethics Code may serve as a source of fundamental public policy because those regulations implement fundamental public policy."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the Authority's acts, as required by Labor Code section 1102.5. (Labor Code § 1102.5) 2. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 3. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	820.2 and 815.2(b).) 4. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.
Paragraph 58, which reads: "The Plaintiff absolutely made clear his opposition in private meetings, in public meetings, at open door and closed door meetings to the failure of the Authority to implement the annexation of the space needed to have the women's restroom comply with the ADA requirements and to complete the project at a reasonable cost and in a timely manner. The American Disabilities Act and its enabling statutes and regulations are federal law and federal regulations."	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows: Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because plaintiff fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the ADA, as required by Labor Code section 1102.5.
Paragraph 59, which reads as follows: "The Plaintiff made clear to the Vice President to whom he reported that he objected and opposed during the negotiations and the due diligence process that Enarson (Vice President and confidante to Thella Bowens) was not properly understanding the lawful use and conditions of the General Dynamics property that resulted and continues to result in losses of millions of dollars for the Authority. California Public Utilities Code section 170056(f)(1)(2)(3)"	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows: Plaintiff could not have had a reasonable belief that the General Dynamics lease violated a federal or state law because the terms of the lease were authorized by statute. (See Public Utilities Code § 170056(f); Labor Code § 1102.5 [reasonable belief requirement])
Paragraph 60, which reads as follows: "The Plaintiff disclosed and opposed the misuse and waste of the unusable land around the Teledyne Ryan property at Capitol	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Improvement meetings, at weekly Operations meetings, at Directors meetings and other times. California Public Utilities Code section 170056(a)(1)(B)”</p>	<p>and irrelevant allegations as follows:</p> <p>Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the referenced statute is in no way connected to the complained of conduct. (See California Public Utilities Code section 170056(a)(1)(B); Labor Code § 1102.5)</p>
<p>Paragraph 61, which reads: “The Plaintiff conducted numerous disclosure meetings with the Vice President to whom he reported regarding the failure of LPI to meet the expenses and conditions that the company had used to bid on the parking operations contract. California Code of Contracts section 1100; section 100. The Plaintiff also met repeatedly with Maurice Gray of LPI and gave him extended help and time to come into compliance on the contract and he failed and refused to do so. This correlated with the idea of conducting an ‘investigation’ of the Plaintiff rather than of the contractor.”</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff’s reference to the “California Code of Contracts” is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature’s intent in enacting that code is to “ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.” None of Plaintiff’s alleged disclosures could reasonably be interpreted as a disclosure of a “violation” of this statement of legislative intent. 2. The Authority is immune for its actions taken in connection with an investigation. (See Gov. Code §§ 821.6 and 815.2(b).) 3. The Authority is immune from liability for its discretionary acts. (See Gov. Code §§ 820.2 and 821.6.)

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CIVIL JUSTICE OFFICE 1
 CENTRAL DIVISION

2007 JAN 10 P 2:36

CLE OF SUPERIOR COURT
 SAN DIEGO COUNTY, CA

9 AMY S. GONZALEZ (SBN 181745)
 10 SAN DIEGO COUNTY REGIONAL AIRPORT
 11 AUTHORITY
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16 Attorneys for Defendant
 17 SAN DIEGO COUNTY REGIONAL AIRPORT
 18 AUTHORITY

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN DIEGO

21 JOSE HERNANDEZ,

22 Plaintiff,

23 v.

24 SAN DIEGO COUNTY REGIONAL
 25 AIRPORT AUTHORITY, a public entity,
 26 and DOES 1 through 12, inclusive,

27 Defendants.

CASE NO. GIC 871979

**NOTICE OF HEARING ON DEMURRER
 AND DEMURRER TO PLAINTIFF'S FIRST
 AMENDED COMPLAINT**

Date: April 6, 2007
 Time: 9:30 a.m.
 Dept: 71
 Judge: Hon. Richard E. Strauss
 Complaint Filed: September 1, 2006
 Trial Date: Not Set

**EXEMPT FROM FEES
 GOVT. CODE § 6103**

28 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 6, 2007 at 9:30 a.m., the first available date from the Court, or as soon thereafter as counsel may be heard, in Department 75 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101, defendant San Diego County Regional Airport Authority ("Authority") demurs to plaintiff's First Amended Complaint on the following grounds:

PAUL, PLEVIN,
 SULLIVAN &
 CONNAUGHTON LLP

NOTICE OF HEARING ON DEMURRER AND
 DEMURRER TO PLAINTIFF'S FAC

1

CASE NO. GIC 871979

- 1 1) The second cause of action fails because there is no private right of action for
- 2 violation of the Authority's Ethics Code.
- 3 2) The second fourth causes of action are all common law claims and are barred by
- 4 Government Code section 815(a);
- 5 3) Each cause of action is barred by the discretionary act immunity and investigatory
- 6 immunity found in Government Code sections 820.2 [second through fourth causes
- 7 of action] and 821.6 [all causes of action], which apply to the Authority through
- 8 Government Code section 815.2(b);
- 9 4) The first, second and fourth causes of action, which allege retaliation and
- 10 violations of Labor Code section 1102.5, fail as a matter of law because Plaintiff
- 11 has not alleged facts supporting a prima facie case showing that he reasonably
- 12 believed that the Authority's actions violated a state or federal law, rule or
- 13 regulation; and
- 14 5) The third cause of action for invasion of privacy fails as a matter of law because
- 15 Plaintiff did not have any reasonable expectation of privacy in his motor vehicle
- 16 repair records or in third parties' opinions regarding his marriage.

17 This demurrer is based on this notice, the accompanying demurrer and memorandum of
 18 points and authorities filed in support of this demurrer and motion to strike, the entire file in this
 19 case, and any other evidence or argument properly considered by the court in connection with this
 20 demurrer.

21 This court follows California Rules of Court, Rule 324. The court will therefore make its
 22 tentative ruling available by telephone at (619) 531-3690 the court day before the scheduled

23 ///

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27 ///

28 ///

1 hearing at 3:00 p.m., or the tentative ruling may be reviewed on the Court's internet web site
2 (www.sdcourt.ca.gov) after 4:00 p.m. on that same day.
3

4 Dated: January 10, 2007

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

6 By: 

FRED M. PLEVIN

SANDRA L. McDONOUGH

ALBERT R. LIMBERG

Attorneys for Defendant

SAN DIEGO COUNTY REGIONAL AIRPORT
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Attorneys for Defendant
 SAN DIEGO COUNTY REGIONAL AIRPORT
 AUTHORITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JOSE HERNÁNDEZ,
 Plaintiff,

v.

SAN DIEGO COUNTY REGIONAL
 AIRPORT AUTHORITY, a public entity;
 and DOES 1 through 12, inclusive,
 Defendants.

CASE NO. GIC 871979

**DEFENDANT SAN DIEGO COUNTY
 REGIONAL AIRPORT AUTHORITY'S
 DEMURRER TO PLAINTIFF'S FIRST
 AMENDED COMPLAINT**

Date: April 6, 2007
 Time: 9:30 a.m.
 Dept: 71
 Judge: Hon. Richard E. Strauss
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**EXEMPT FROM FEES
 GOVT. CODE § 6103**

PAUL, PLEVIN,
 SULLIVAN &
 CONNAUGHTON LLP

DEFENDANT'S DEMURRER TO PLAINTIFF'S
 FIRST AMENDED COMPLAINT

1

CASE NO. GIC 871979

Pursuant to Code of Civil Procedure section 430.10(a), (e) and (f), defendant San Diego County Regional Airport Authority ("the Authority") hereby demurs to each cause of action in plaintiff's First Amended Complaint as follows:

FIRST CAUSE OF ACTION

Violation of California Labor Code Section 1102.5 et seq.

Retaliation for Protected Disclosure

1. Plaintiff's first cause of action fails to state sufficient facts to constitute a cause of action because the Authority is immune from suit under Government Code sections 821.6 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)
2. Plaintiff's first cause of action fails to state sufficient facts to constitute a cause of action because plaintiff has not pled facts supporting his conclusion that he reasonably believed that the Authority's actions violated a state or federal law, rule or regulation. (Code Civ. Proc. § 430.10(a) and (f).)
3. Plaintiff's first cause of action is uncertain. (Code Civ. Proc. § 430.10(f).)

SECOND CAUSE OF ACTION

Pretextual Investigation of Violation of Ethics Code

4. Plaintiff's second cause of action is barred under Government Code section 815(a) because the Authority, as a public entity, cannot be liable for common law claims. (Code Civ. Proc. § 430.10(a) and (e).)
5. Plaintiff's second cause of action is barred as a matter of law because there is no private action for a violation of the Authority's Ethics Code. (Code Civ. Proc. § 430.10(a) and (e).)
6. Plaintiff's second cause of action fails to state sufficient facts to constitute a cause of action because the Authority is immune from suit under Government Code sections 821.6 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)
7. Plaintiff's second cause of action fails to state sufficient facts to constitute a cause of action because the Authority is immune from suit under Government Code sections 820.2 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)

- 1 8. Plaintiff's second cause of action fails to state sufficient facts to constitute a cause
 2 of action because plaintiff has not pled facts supporting his conclusion that he
 3 reasonably believed that the Authority's actions violated a state or federal law, rule
 4 or regulation. (Code Civ. Proc. § 430.10(a) and (f).)
- 5 9. Plaintiff's second cause of action is uncertain. (Code Civ. Proc. § 430.10(f).)

6 **THIRD CAUSE OF ACTION**

7 **Violation of the Right to Privacy**

- 8 10. Plaintiff's third cause of action is barred under Government Code section 815(a)
 9 because the Authority, as a public entity, cannot be liable for common law claims.
 10 (Code Civ. Proc. § 430.10(a) and (e).)
- 11 11. Plaintiff's third cause of action fails to state sufficient facts to constitute a cause of
 12 action because the Authority is immune from suit under Government Code
 13 sections 821.6 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)
- 14 12. Plaintiff's third cause of action fails to state sufficient facts to constitute a cause of
 15 action because the Authority is immune from suit under Government Code
 16 sections 820.2 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)
- 17 13. Plaintiff's third cause of action fails to state sufficient facts to constitute a cause of
 18 action because plaintiff has not alleged a sufficient invasion of privacy. (Code
 19 Civ. Proc. § 430.10(a) and (f).)
- 20 14. Plaintiff's third cause of action is uncertain. (Code Civ. Proc. § 430.10(f).)

21 **FOURTH CAUSE OF ACTION**

22 **Wrongful Discharge in Violation of Public Policy**

- 23 15. Plaintiff's fourth cause of action is barred under Government Code section 815(a)
 24 because the Authority, as a public entity, cannot be liable for common law claims.
 25 (Code Civ. Proc. § 430.10(a) and (e).)
- 26 16. Plaintiff's fourth cause of action fails to state sufficient facts to constitute a cause
 27 of action because the Authority is immune from suit under Government Code
 28 sections 821.6 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)

- 1 17. Plaintiff's fourth cause of action fails to state sufficient facts to constitute a cause
2 of action because the Authority is immune from suit under Government Code
3 sections 820.2 and 815.2(b). (Code Civ. Proc. § 430.10(a) and (e).)
4 18. Plaintiff's fourth cause of action fails to state sufficient facts to constitute a cause
5 of action because plaintiff has not pled facts supporting his conclusion that he
6 reasonably believed that the Authority's actions violated a state or federal law, rule
7 or regulation. (Code Civ. Proc. § 430.10(a) and (f).)
8 19. Plaintiff's fourth cause of action is uncertain. (Code Civ. Proc. § 430.10(f).)
9

10 Dated: January 10, 2007

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

11
12 By: 

13 FRED M. PLEVIN
14 SANDRA L. MCDONOUGH
15 ALBERT R. LIMBERG
16 Attorneys for Defendant
17 SAN DIEGO COUNTY REGIONAL
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AUTHORITY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JOSE HERNANDEZ,

Plaintiff,

v.

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY, a public entity;
and DOES 1 through 12, inclusive,**

Defendants.

CASE NO. GIC 871979

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY'S
DEMURRER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT AND/OR
MOTION TO STRIKE**

Date: April 6, 2007
Time: 9:30 a.m.
Dept: 71
Judge: Hon. Richard E. Strauss
Complaint Filed: September 1, 2006
Trial Date: Not Set

**EXEMPT FROM FEES
GOVT. CODE § 6103**

PAUL, PLEVIN,
SULLIVAN &
CONNAUGHTON LLP

MEMO OF POINTS AND AUTHORITIES IN
SUPPORT OF DEMURRER/MOTION TO STRIKE

CASE NO. GIC 871979

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I. INTRODUCTION AND SUMMARY OF ALLEGATIONS

Plaintiff Jose Hernandez used his one opportunity to amend his complaint when he faced the San Diego County Regional Airport Authority's ("Authority") demurrer and motion to strike, but the First Amended Complaint ("FAC") does nothing more than add conclusory allegations that do not support Hernandez' legal theories. Hernandez has now shown that he is incapable of properly alleging his causes of action and, as a result, the Authority's demurrer should be sustained without leave to amend and/or its motion to strike should be granted.

Hernandez was employed as a Director of Landside Operations for the Authority. In late December 2005, an Authority employee reported that Hernandez may have violated certain provisions of the Authority's Ethics Code, so it began an investigation. At the conclusion of the investigation, the Authority determined that Hernandez had acted inappropriately by accepting free goods and services from Authority vendors, including free roundtrip tickets to Hawaii, tickets to football and baseball games, and free parking passes. Hernandez resigned from his employment in February 2006 after the Authority informed him of its conclusions.

Hernandez now brings this baseless First Amended Complaint in an effort to smear the Authority's reputation and to place blame on others for his own personal actions. Primarily, Hernandez alleges that the Authority retaliated against him for disclosing improper activities, even though Hernandez was merely engaged in his day-to-day duties of evaluating aspects of the Authority's operations. Although the FAC is replete with allegations of the Authority's alleged ethical violations, Plaintiff explicitly alleges that he disclosed just four alleged improprieties (See FAC ¶ 39; see also ¶¶ 10-14):

- Bryan Enarson's alleged "side deal" with Host regarding the women's restroom renovation in Terminal One (FAC ¶¶ 10-11);
- The General Dynamics parking lot lease ("General Dynamics Lease") (FAC ¶ 12);
- The Teledyne Ryan parking lot lease ("Teledyne Ryan Lease") (FAC ¶ 13); and
- Double-billing of expenses on the Lindbergh Parking ("LPi") Contract (FAC ¶ 14).

The dates of the above disclosures by Plaintiff are notably missing from Plaintiff's FAC (see FAC ¶¶ 10-14 and 39), but as detailed below, Plaintiff could not have reasonably believed that any of

1 these actions violated the law.

2 In his second cause of action for "Pretextual Investigation of Violation of Ethics Code"¹,
 3 Plaintiff alleges that the Authority, through its officers and employees, violated certain provisions of
 4 the Authority's Ethics Code, but Plaintiff does not actually wrap these allegations into any
 5 cognizable cause of action against the Authority. In fact, the second cause of action appears more to
 6 be a dig at the Authority than a claim for retaliation since Plaintiff does not even allege that he
 7 complained about the alleged unethical acts.² (*Id.* at ¶¶ 38-39.)³

8 Plaintiff also alleges a third cause of action for privacy based on the investigator's inquiry
 9 into Plaintiff's car repairs through an on-site vendor at the Airport and Plaintiff's relationship with
 10 his wife. Finally, the fourth cause of action for wrongful termination in violation of public policy
 11 appears to be merely a repeat of the first and second causes.

12 Overall, Plaintiff's FAC is uncertain and poorly pled. In addition, each cause of action in
 13 the FAC fails for the following reasons:

- 14 1) The second cause of action fails because there is no private right of action for
 15 violation of the Authority's Ethics Code;
- 16 2) The second, third and fourth causes of action are all common law claims and as such
 17 are barred by Government Code section 815(a);
- 18 3) Plaintiff's causes of action are barred by the discretionary act immunity and
 19

20 ¹ The legal theory underpinning the second cause of action is uncertain. The second cause of action could be
 21 construed as alleging (1) an independent cause of action under the Authority's Ethics Code, (2) a Labor Code section
 22 1102.5 claim, or (3) a wrongful termination in violation of public policy claim. However, the complaint already
 contains express causes of action for (2) and (3). In an abundance of caution, this demurrer and motion to strike
 addresses each potential legal theory presented in the second cause of action. However, as shown in this
 memorandum, the second cause of action fails under any of the three potential legal theories.

23 ² The alleged unethical acts include: Flying to Texas for Blue Bell ice cream (FAC ¶ 37(a)); inappropriate CEO
 24 ticket changes and Premier Club access (*Id.* at ¶ 37(b)); shipping meat from Texas for free for the Authority's
 25 employee barbeque (*Id.* at ¶ 37(c)); airline privileges for the Authority's CEO's sister (*Id.* at ¶ 37(d)); free upgrades
 26 (*Id.* at ¶ 37(e) and (f)); using Airport parking lots for non-Airport activities (*Id.* at ¶ 37(f) and (g)); using official
 position to obtain tickets (*Id.* at ¶ 37(j)); sweeping the Authority Board Chairman's office for listening devices (*Id.* at
 27 ¶ 37(k)); and the allegedly unwarranted investigation and subsequent termination of Plaintiff (*Id.* at ¶ 15-16 and 23-
 28 33). As further detailed in the accompanying notice of motion and motion to strike, none of these alleged unethical
 acts, even if reported, violate the Ethics Code or support a Labor Code section 1102.5 claim.

³ In fact, the only alleged unethical acts that Plaintiff affirmatively alleges that he reported are those listed in the First
 Cause of Action: the Concession Renovations, the GD and Teledyne Ryan Leases, and the LPi Contract (*Id.* at ¶ 39.)

investigatory immunity found in Government Code sections 820.2 (second through fourth causes of action) and 821.6 (all causes of action), which apply to the Authority through Government Code section 815.2(b);

- 4) The first, second and fourth causes of action, which allege retaliation and violations of Labor Code section 1102.5, fail as a matter of law because Plaintiff has not alleged facts supporting a prima facie case showing that he reasonably believed that the Authority's actions violated a state or federal law, rule or regulation; and
- 5) The third cause of action for invasion of privacy fails as a matter of law because Plaintiff did not have any reasonable expectation of privacy in his motor vehicle repair records or in third parties' opinions regarding his marriage;

For the foregoing reasons, and as more fully discussed herein, defendant respectfully requests that this court sustain its demurrer to each cause of action in the FAC. In the alternative, defendant moves to strike those allegations that are barred by the various deficiencies noted above, as detailed in the accompanying notice of motion and motion to strike the FAC.⁴

II. DEMURRER AND MOTION TO STRIKE STANDARDS

A. General Standard for Demurrer.

A demurrer tests the legal sufficiency of the Plaintiff's complaint. (Code Civ. Proc.,

⁴ The Authority requests that the Court strike allegations from the complaint on the following grounds:

- Plaintiff has failed to allege a state or federal law, rule or regulation that the Authority allegedly violated, as required by Labor Code section 1102.5 (FAC ¶¶ 14, 18, 28, 29, 37 (a-o), 38-41, 56, 57, and 61);
- Plaintiff failed to allege facts supporting his conclusory allegation that he reasonably believed that the Authority's actions violated a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b). (FAC ¶¶ 10, 11, 12, 29, 37, 38-39, 49, 57, 58);
- Plaintiff has failed to allege that the Authority made or enforced a rule, policy or regulation that prevented him from disclosing violations of law, as required by Labor Code section 1102.5(a) (FAC ¶ 38);
- Plaintiff has failed to allege that he disclosed certain purported ethical violations (FAC ¶ 37);
- The Authority is immune from liability for its actions in connection with the investigation of potential Ethics Code violations under Government Code sections 821.6 and 815.2(b) (FAC ¶¶ 23-26, 28, 30, 38, 47-50, and 56-61);
- The Authority is immune from liability for its discretionary acts under Government Code sections 820.2 and 815.2(b) (FAC ¶¶ 23-26, 28, 30, 38, 47-50, and 56-61);
- Plaintiff did not have a reasonable expectation of privacy in his car repair records (FAC ¶ 25);
- Plaintiff did not have a reasonable expectation of privacy in third parties' observations of his marital relationship (FAC ¶¶ 26 and 48); and
- Plaintiff may not pursue a private right of action for violations of the Authority's Ethics Code (FAC ¶¶ 37-42).

1 § 430.10.) Although leave to amend is typically granted liberally, it should be denied where the
 2 nature of the claim is clear, but no liability exists under substantive law. (*Lawrence v. Bank of Am.*
 3 (1985) 163 Cal.App.3d 431, 436.) Thus, denial of leave to amend is proper where the Plaintiff
 4 cannot show in what manner he can amend and how the amendment will change the legal effect of
 5 his pleading. (*CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1539.) The
 6 burden of showing a reasonable possibility of successful amendment "is squarely on the Plaintiff."
 7 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Moreover, when a plaintiff is given an opportunity
 8 to amend the complaint, strict construction of the complaint is required and it must be presumed
 9 that plaintiff has stated the strongest possible case. (*Gonzales v. State* (1977) 68 Cal.App.3d 621.)

10 **B. Plaintiff Must Plead with Specificity Because the Authority is a Public Entity.**

11 A plaintiff's burden is more difficult when he seeks to impose liability on a public entity, as
 12 is the case here, because every fact material to the existence of the public entity's liability "must be
 13 pled with particularity." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)
 14 This heightened pleading requirement allows courts to evaluate the presence or absence of statutory
 15 immunities at the earliest possible stage in the litigation so as to avoid any unnecessary waste of
 16 time and expense. (See, *County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 ["it is
 17 desirable that an important jurisdictional question presented by the defense of sovereign immunity
 18 from suit should be speedily determined"]; *Keyes v. Santa Clara Valley Water Dist.* (1982) 128
 19 Cal.App.3d 882, 885-86 [Plaintiffs must plead facts sufficient to show that their claims lie "outside
 20 the breadth of any applicable statutory immunity"].)

21 The FAC at issue here falls short of meeting this elevated pleading standard and, as a result,
 22 should be dismissed without leave to amend.

23 **C. In the Alternative, this Court May Strike any Improper or Irrelevant Material**

24 In the event that this Court does not sustain the Authority's demurrer to each cause of action,
 25 the Court has the authority to strike any improper or irrelevant matter from the pleadings pursuant to
 26 California Code of Civil Procedure sections 435 and 436(a).

27 ///

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III. EACH OF PLAINTIFF'S CAUSES OF ACTION IS BARRED BY IMPORTANT GOVERNMENTAL IMMUNITIES

In 1963, the California Legislature enacted several interrelated laws known as the Government Claims Act ("Act"). (*Tokeshi v. State of California* (1990) 217 Cal.App.3d 999, 1004; Gov. Code §§ 810-895.8.) It is well settled under the Act that a public entity is not liable for tortious injury unless the liability is specifically imposed by statute or the Constitution. (*Colome v. State Athletic Com.* (1996) 47 Cal.App.4th 1444, 1454-1455.) Here, Plaintiff's claims are barred by the discretionary act immunity (Gov. Code § 820.2), the investigatory immunity (Gov. Code § 821.6), and the immunity from common law claims (Gov. Code § 815(a).)

A. Government Code Sections 815.2(b) and 820.2 Bar Plaintiff's Second, Third and Fourth Causes of Action.

Government Code section 820.2 provides that "except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." A "discretionary act" is any act that requires the exercise of "judgment or choice," or that emanates from the employee's decision as to what is "just and proper under the circumstances." (*Burgdorf v. Funder* (1966) 246 Cal.App.2d 443, 449.) This immunity applies to a wide variety of claims, including retaliatory discharge. (See *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 978, 989 [820.2 bars claim for retaliatory discharge]; *Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1438-39 [County immune under 820.2 for breach of the covenant of good faith and fair dealing and intentional infliction of emotional distress claims]; *Kim v. Walker* (1989) 208 Cal.App.3d 375, 382-383 [defamation occurring within course of discretionary acts held immune under 820.2]; *Hardy v. Vial* (1957) 48 Cal.2d 577, 584 [affidavits sworn by state college officials regarding actions of Plaintiff held absolutely privileged because statements were made within their discretionary authority].) Further, this immunity extends to the Authority by virtue of Government Code section 815.2(b). (*Kemmerer, supra*, 200 Cal.App.3d at p. 1435 ["Though sections 821.6 and 820.2 expressly immunize only the employee, if the employee is immune, so too is the [public entity].".])

1 In *Caldwell v. Montoya*, *supra*, the California Supreme Court upheld the trial court's
 2 sustaining of defendants' demurrer to a complaint alleging retaliation. The Court held that the
 3 school board's decision to terminate the school's superintendent was a discretionary act under
 4 section 820.2 because it involved a basic governmental policy decision entrusted to the broad
 5 official judgment of the school board. In so holding, the Court explained that it is well settled that
 6 discretionary immunity "extends to fundamental decisions within the executive or administrative
 7 authority of the agency or official." (*Caldwell*, *supra*, 10 Cal.4th at p. 983, fn. 5.) Further, an
 8 allegation that the standards used to evaluate an employee were wrong and impermissible (even
 9 retaliatory) cannot divest a discretionary policy decision of its immunity. (*Id.* at p. 984.) Finally,
 10 the Court concluded that section 820.2 applies to common law and statutory claims and an
 11 "immunity cannot be abrogated by a statute which simply imposes a general legal duty or liability
 12 on persons, including public employees." (*Id.* at p. 986.)

13 *Caldwell* controls here. As the President and CEO, Thella Bowens had broad responsibility
 14 for overseeing operation of the Authority, including investigating any alleged misconduct by one of
 15 the Authority's directors. Plaintiff's FAC focuses entirely on the motives of the Authority in
 16 initiating an investigation against him and his ultimate termination, both of which are discretionary
 17 acts. Bowens and the former Vice President of Operations' decision to terminate Plaintiff's
 18 employment necessarily involved the exercise of analysis and judgment as to what was proper in the
 19 circumstances. Therefore, much like the school board's decision in *Caldwell*, the Authority's
 20 decision to terminate Plaintiff was a policy decision and discretionary in nature, immunizing the
 21 Authority from suit under Government Code sections 820.2 and 815.2(b).

22 Moreover, although Plaintiff characterizes his termination as "retaliatory," the Authority
 23 cannot be divested of its immunity merely because Plaintiff asserts that the investigation and
 24 termination were unfair. The immunity applies regardless of whether the Authority allegedly
 25 abused its discretion. As a result, Plaintiff's second, third and fourth causes of action are barred as a
 26 matter of law by the discretionary immunity found in Government Code section 820.2 and
 27 applicable to the Authority under section 815.2(b).

B. Government Code section 821.6 and 815.2(b) Immunize the Authority From Suit for Instituting Administrative Proceedings.

As a separate matter, Government Code sections 821.6 and 815.2(b) immunize the Authority from liability for instituting an investigation. Government Code section 821.6 provides that “[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.” This immunity applies to the Authority as well. (Gov. Code § 815.2(b).)

Courts have applied this investigatory immunity to all public employees, and their respective public entities, who institute, investigate or are otherwise involved in an employee’s termination. (*Kemmerer, supra*, 200 Cal.App.3d at pp. 1436-37 [holding public employees immune based upon their investigation of, and recommendation to terminate, Plaintiff]; *Summers v. City of Cathedral City* (1990) 225 Cal.App.3d 1047, 1064 [same].) Like section 820.2, section 821.6 immunity has been specifically applied to whistle-blower allegations and other wrongful termination claims. (*Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1425 [applying section 821.6 immunity to a common law “whistleblower” wrongful discharge claim]; and *Caldwell, supra*, 10 Cal.4th at p. 982.)

Here, Plaintiff alleges that defendant instituted an unfair investigation, which ultimately resulted in his termination. (FAC ¶¶ 7 and 23-30.) The allegedly unfair investigation is an administrative proceeding under section 821.6 and cases interpreting that section. As a result, the Authority is immune from Plaintiff’s claims arising out of the Authority’s investigation and Plaintiff’s resulting termination. The Authority’s demurrer should therefore be sustained without leave to amend and/or the motion to strike allegations of the FAC related to the investigation and subsequent termination should be granted.

C. The Authority is Immune from Liability for Non-Statutory Claims.

The Authority is also immune from the second, third and fourth causes of action because

1 they are common law claims.⁵ Government Code section 815(a) expressly states “[e]xcept as
 2 otherwise provided by statute, a ‘public entity’ is not liable for an injury, whether such injury arises
 3 out of an act or omission of the public entity or a public employee or any other person.” Public
 4 entity liability is limited because “[s]overeign immunity is the rule in California.” (*Colome*, 47 Cal.
 5 App. 4th at 1454-1455.) Thus, the Act provides that all public entities, including the Authority, are
 6 immune from liability *unless* the Legislature expressly provides for such liability. (Gov. Code §§
 7 811.2 and 815.)

8 Therefore, common law claims may not, as a matter of law, be brought against public
 9 entities. (Govt. Code § 815(a)); see *Harshbarger v. City of Colton* (1988) 197 Cal.App.3d 1335,
 10 1339 [“Government Code section 815, enacted in 1963, abolished all common law or judicially
 11 declared liabilities for public entities”]; *Michael J. v. County Department of Adoptions* (1988) 201
 12 Cal.App.3d 859, 866 [claims against public entities must be based on statutes, not common law tort
 13 theories of liability].) This immunity applies as well to claims for wrongful discharge in violation
 14 of public policy and privacy claims. (See *Palmer v. Regents of University of California* (2003) 107
 15 Cal.App.4th 899 [explaining that a claim for wrongful termination in violation of public policy is a
 16 “common law, judicially created tort” that is “not authorized by statute”]; *Shoemaker, supra*, 2
 17 Cal.App.4th at p. 1425 [stating that a claim of wrongful termination in violation of public policy
 18 “does not escape the effect of” immunity under Gov. Code section 821.6.]; *Marich v. MGM/UA*
 19 *Telecommunications, Inc.* (2003) 113 Cal.App.4th 415, 421 [privacy cause of action is a common
 20 law claim].)

21 The Authority is a “public entity” both under the Act (Gov. Code § 811.2) and as created by
 22 California Public Utilities Code section 170002. The Authority is therefore immune from liability
 23 for the second, third and fourth causes of action, which are all common law claims, and the
 24 Authority’s demurrer to these causes of action should be sustained, without leave to amend.
 25

26
 27 ⁵ Since there is no statutory authority for the second cause of action entitled “Pretextual Investigation of Violation of
 28 Ethics Code” [See Section IV(C), *infra*], the Authority assumes that Plaintiff is trying to plead a common law claim in
 his second cause of action.

1 **IV. EACH OF PLAINTIFF'S CLAIMS IS BARRED ON SUBSTANTIVE GROUNDS AS**
 2 **WELL**

3 Not only are Plaintiff's causes of action barred by the governmental immunities set forth
 4 above, each of the causes of action also fail on its merits.

5 **A. Plaintiff's First, Second and Fourth Causes of Action for Retaliation Fail as a Matter**
 6 **of Law.**

7 Plaintiff's first, second and fourth causes of action all allege under different legal theories
 8 that Plaintiff was retaliated against for complaining about the Authority's actions. To establish a
 9 *prima facie* case of retaliation under the common law or Labor Code section 1102.5(b), as with
 10 FEHA and Title VII, Plaintiff must allege that (1) he engaged in a "protected activity," (2) the
 11 Authority took an adverse employment action against him, and (3) a causal link exists between his
 12 protected activity and the adverse employment action. (*Morgan v. Regents of University of*
 13 *Cal.* (2000) 88 Cal.App.4th 52, 69.) In order to allege that Plaintiff engaged in a protected activity,
 14 as required by the first prong of the *prima facie* case, Plaintiff must allege that he disclosed, to a
 15 government or law enforcement agency, information that he reasonably believed disclosed a
 16 violation of state or federal statute, rule, or regulation. (Lab. Code § 1102.5, subd. (b).) It is not
 17 enough for Plaintiff to allege mere conclusions of law to support his retaliation claims. (*Ankeny v.*
 18 *Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.) Instead, he must allege facts
 19 that support those claims. (*Ibid.*)

20 Plaintiff's claim cannot even get off the ground because he did not, and could not have,
 21 reasonably believed that he disclosed violations of a state or federal statute, rule, or regulation.
 22 Even though Plaintiff amended his complaint to reference federal and state statutes, he either knew,
 23 or as a matter of law he should have known, that the alleged wrongful acts were permissible. As a
 24 result, he could not have reasonably believed that the Authority violated a state or federal law, rule
 25 or regulation, and his retaliation claims fail.

26 **1. Alleged Violations of the Authority's Ethics Code Cannot Support a Retaliation**
 27 **Claim**

28 By its very terms, Labor Code section 1102.5 requires a Plaintiff to disclose a violation of a

1 state or federal law, rule or regulation. (See Labor Code § 1102.5(b).) Plaintiff's amended
 2 complaint focuses primarily on alleged violations of the Authority's own Ethics Code, which is
 3 simply an internal guideline and not a state or a federal law, rule⁶ or regulation.⁷ Accordingly, the
 4 Authority moves to strike all references to the Ethics Codes violations in the FAC (see footnote 3
 5 for a listing of alleged violations) because those allegations cannot support a Labor Code section
 6 1102.5 cause of action.

7 **2. Plaintiff Could Not Have Had a Reasonable Belief That He Was Disclosing a**
 8 **Violation of a State or Federal Law, Rule or Regulation.**

9 Even *assuming arguendo* that the Ethics Code falls within the definition of a federal or state
 10 law under Labor Code section 1102.5, Plaintiff still could not have had a reasonable belief that the
 11 Authority was violating the law because the Authority's actions were permissible and known to the
 12 public.

13 Plaintiff's FAC also adds references to Plaintiff's disclosures of alleged violations of the
 14 ADA, Public Utilities Code, and the "California Code of Contracts" (which does not exist). But the
 15 facts, as alleged do not support Plaintiff's ultimate conclusion that he reasonably believed that the
 16 Authority's actions violated any of these statutes, nor can these facts reasonably be interpreted to
 17 amount to any such violation. (See *Ankeny, supra*, 88 Cal.App.3d at p. 537 [complaint must be
 18 supported by more than conclusory allegations].) Without facts supporting Plaintiff's alleged
 19 reasonable belief that the Authority's actions violated a federal or state law, Plaintiff's claims must
 20 fail.

21 **a. The General Dynamics Lease.**

22 One of Plaintiff's alleged protected disclosures involved uncovering the financial problems

23 ⁶ In *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384, the court recognized that the
 24 2003 Amendment to Labor Code section 1102.5, which added that the plaintiff could disclose a violation of a "rule"
 as a protected activity, made it clear that the alleged violated "rule" must be a "state or federal 'rule'". (*Ibid.*)

25 ⁷ The only referenced federal law in the FAC is the Americans with Disabilities Act ("ADA"). (See FAC ¶¶ 10, 11
 26 and 58.) However, even those paragraphs in the FAC only allege that compliance with the ADA would be more
 27 expensive as a result of the Authority's actions; not that Plaintiff complained about actual ADA violations. (*Ibid.*)
 Plaintiff also vaguely alleges that the Authority's actions violated "state law" and that he believed LPi violated the
 28 Public Contracting Law. Such allegations are uncertain and do not meet Plaintiff's burden of pleading his causes of
 action with particularity.

1 with the General Dynamics Lease. (FAC ¶ 12.) However, the terms of the General Dynamics Lease
 2 were mandated by Public Utilities Code section 170056(f). As a result, Enarson's and the
 3 Authority's acceptance of those lease terms cannot be a violation of law. If anything, Plaintiff's
 4 FAC alleges compliance with Public Utilities Code section 170056(f), not a violation of that statute.
 5 (FAC ¶ 12.) Plaintiff therefore could not have had a reasonable belief that the Authority was
 6 violating the law by accepting the General Dynamics lease terms.

7 **b. The Teledyne Ryan Lease.**

8 Plaintiff also alleges that he disclosed findings related to the environmental contamination
 9 on the Teledyne Ryan Parking Lot and disclosed the amount of money that the Authority negotiated
 10 for the lease. (FAC ¶ 13.) Curiously, Plaintiff contends he reasonably believed the Authority's
 11 conduct regarding the Teledyne Ryan lease violated Public Utilities Code section 170056(a)(1)(B).
 12 However, this section merely states that the Teledyne sublease shall not be transferred to the
 13 Authority, and shall remain the property of the San Diego Unified Port District. This section has
 14 absolutely nothing to do with environmental contamination or the negotiated price for the lease.
 15 Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the
 16 referenced statute is in no way connected to the complained of conduct.

17 Even if the Authority's conduct is considered a violation of Public Utilities Code section
 18 170056(a)(1)(B), there can be no "disclosure" under section 1102.5 when the complainant merely
 19 republishes public information. A disclosure requires that the employee "expose to view" or "make
 20 known" a violation of the law. (See e.g. *Holmes v. General Dynamics Corp.* (1993) 17 Cal.App.4th
 21 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public
 22 policy doctrine].) Here, Plaintiff's "disclosures" seem to consist of merely talking about
 23 "information" that was already known to employees of the Authority. (FAC ¶ 13.) If republication
 24 of publicly known information could constitute a protected activity under section 1102.5, any
 25 employee of a company who has been sued for any statutory violation could send a copy of that
 26 complaint to a government official and thus become a "protected" employee under section 1102.5,
 27 even if that employee was not the Plaintiff. Such a result is absurd. A republication does not "make
 28 known" violations of law and cannot be a disclosure under section 1102.5 as a matter of law.

1 As a result of the foregoing, neither the disclosure regarding the GD Lease, nor the
2 disclosure regarding the Teledyne Ryan Lease, can support Plaintiff's section 1102.5 causes of
3 action, and therefore any reference to those leases must be stricken from the First Amended
4 Complaint.

5 **c. Lindbergh Parking**

6 As discussed above, the Authority's internal rules are not the equivalent of a state or federal
7 statute, rule or regulation. Thus, whether Plaintiff had a reasonable belief that he was disclosing
8 violations of the Authority's Contract Code is immaterial and cannot support a claim under Labor
9 Code section 1102.5. Plaintiff also looks to the non-existent "California Code of Contracts" to
10 support his claim. Because it does not exist, Plaintiff's reliance upon the "California Code of
11 Contracts" cannot be reasonable and cannot be the basis for a Labor Code section 1102.5 claim.⁸

12 **d. The Restroom**

13 Plaintiff also claims that there was a "side deal" between Host and Bryan Enarson that
14 increased the restroom project cost by more than \$2 million. However, Plaintiff's sparse factual
15 allegations do not support his ultimate conclusion that he reasonably believed an ADA violation had
16 occurred. Plaintiff conveniently omits any specificity as to which ADA provision he believed was
17 violated. Plaintiff also fails to allege how "side deal" and increased costs associated with the
18 restroom project purportedly violated the ADA. Thus, Plaintiff could not have a reasonable belief
19 that any such violation occurred.

20 **3. Plaintiff's Belief Could Not Have Been Reasonable as a Matter of Law Because**
21 **Defendant is Immune From Liability.**

22 In addition, Plaintiff could not have had a reasonable belief that the Authority was engaged
23 in any unlawful acts because the Authority is immune from suit for its actions. Primarily, as
24 discussed herein, the Government Claims Act provides public entities with immunity for their

25 ⁸ If Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract
26 Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting
27 that code, to "ensure full compliance with competitive bidding statutes as a means of protecting the public from
28 misuse of public funds." None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a
"violation" of this statement of legislative intent.

1 employees' discretionary acts. (Gov. Code §§ 820.2 and 815.2, subd.(b).) In addition to those cases
 2 already listed in Section III(A) above, this discretionary act immunity has been applied in situations
 3 where a public administrator determines how assets of an estate should be handled (*Saltares v.*
 4 *Kristovich* (1970) 6 Cal.App.3d 504, 515), and where city officials chose one ambulance provider
 5 over another within their power under a legislative directive to develop rules for administration of
 6 the hospital. (*Widdows v. Koch* (1968) 263 Cal.App.2d 228, 239-240).

7 In this case, a Vice President's determination of how to negotiate certain long-term leases
 8 and other contracts undoubtedly is a discretionary decision. Additionally, "a public employee is not
 9 liable for his act or omission, exercising due care, in the execution or enforcement of any law."
 10 (Gov. Code § 820.4.) At best, Plaintiff seeks to assert that the execution or enforcement of the
 11 leases was unlawful. Under section 820.4 and 815.2(b), a public entity enjoys immunity for such
 12 execution or enforcement. Since Government Code sections 820.2 and 820.4 provide immunities
 13 for the alleged activities of the Authority, Plaintiff could not have reasonably believed that the
 14 Authority's actions were unlawful.

15 **B. Plaintiff Has Not Alleged a Right to Privacy Claim as a Matter of Law.**

16 Not only does Plaintiff's "right to privacy" claim fail because it is a common law claim and
 17 subject to the investigatory and discretionary act immunities, it also fails on its merits. "Common
 18 law invasion of privacy actions require the Plaintiff to show: (1) [intentional] intrusion into a
 19 private place, conversation or matter, (2) in a manner highly offensive to a reasonable person."
 20 (*Marich, supra*, 113 Cal.App.4th at p. 421.) Further, the Court must make a preliminary
 21 determination of "offensiveness" in determining whether an intrusion of privacy claim exists in the
 22 first instance. (*Sanchez-Scott v. Alza Pharmaceuticals* (2001) 86 Cal.App.4th 365, 376;
 23 *Wilkins v. National Broadcasting Co., Inc.* (1999) 71 Cal.App.4th 1066, 1075-1076; *Miller v.*
 24 *National Broadcasting Co.* (1986) 187 Cal.App.3d 1463 at pp. 1483-1484.)

25 Here, Plaintiff has alleged two privacy violations by the investigator: (1) obtaining
 26 Plaintiff's vehicle repair records; and (2) asking third parties about Plaintiff's marriage. (FAC, ¶
 27 47-51.) However, Plaintiff cannot show that the Authority intruded into either of these alleged
 28 personal matters in a manner highly offensive to a reasonable person.

1 First, Plaintiff did not have a reasonable expectation of privacy in his vehicle repair records,
 2 especially when the repairs were done at an on-site vendor. Similarly, inquiries to third parties
 3 regarding the nature of Plaintiff's marital relationship did not invade Plaintiff's reasonable
 4 expectation of privacy. Any of the co-workers' observations of Plaintiff and his wife are not
 5 confidential or private on their face because they are merely outsiders' opinions and observations.
 6 If the co-workers shared information with the investigators beyond simple observations, then this
 7 information would be based on details provided by Plaintiff to the witnesses. Plaintiff would thus
 8 have waived any right to assert a privacy objection to the extent that he shared with his co-workers
 9 personal details about his relationship with his wife.

10 Without demonstrating a reasonable expectation of privacy in either the vehicle repair
 11 records, or the nature of his relationship with his wife, Plaintiff's right of privacy claim fails as a
 12 matter of law.

13 **C. The Authority's Ethics Code Does Not Create a Private Right of Action.**

14 In addition to the various immunities and substantive issues described above, Plaintiff's
 15 second cause of action is also barred to the extent that Plaintiff seeks to create a private right of
 16 action out of the Authority's Ethics Code. As discussed previously, the Ethics Code does not rise to
 17 the level of a state law or regulation, but even if it did, Plaintiff may not seek damages unless the
 18 code specifically confers a private right of action for damages. As the Court explained in *Vikco*
 19 *Insurance Services, Inc. v. Ohio Indemnity Company* (1999) 70 Cal.App.4th 55:

20 [a]doption of a regulatory statute does not automatically create a private right to
 21 sue for damages resulting from violations of the statute. Such a private right of
 22 action exists only if the language of the statute or its legislative history clearly
 indicates the Legislature intended to create such a right to sue for damages. If the

23 Legislature intends to create a private cause of action, we generally assume it will
 do so directly [,] ... in clear, understandable, unmistakable terms.... [Citation.]

24 (*Id.* at 62-63, citing *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 294-
 25 295 [internal quotes omitted]. See also *Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54
 26 Cal.App.4th 121, 125-37 [judge may not insert what has been omitted from a statute; legislative
 27 intent alone determines whether statute creates new private right to sue]; *Arriaga v. Loma Linda*
 28

1 *University* (1992) 10 Cal.App.4th 1556, 1563-1564 [applying *Moradi-Shalal* and holding
2 provisions of Government Code do not create private right of action where statute showed no such
3 intent].)

4 The Authority did not provide, in "clear, understandable, unmistakable terms," a right to sue
5 for damages under the Ethics Code, nor is there such a right created by the Legislature. Accordingly,
6 Plaintiff may not maintain a private right of action for individual damages under the Authority's
7 Ethics Code.

8 V. THE FIRST AMENDED COMPLAINT IS UNCERTAIN

9 A demurrer should be sustained when a pleading is uncertain, ambiguous or unintelligible.
10 (Code of Civ. Proc., § 430.10(f).) To survive a demurrer based on uncertainty, a complaint must
11 contain factual allegations sufficient to give a defendant notice as to the issues of the action. (See
12 *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139 fn. 2.) Plaintiff's First
13 Amended Complaint does not meet that burden.

14 Here, Plaintiff's FAC still contains duplicative and frivolous allegations. In addition, the
15 second cause of action combines several different legal theories in one cause of action. The
16 Authority therefore requests a more certain statement of the allegations and legal theories in the
17 event that Plaintiff is given leave to amend his FAC.

18 VI. CONCLUSION

19 For the foregoing reasons, the Authority respectfully requests that this court sustain its
20 demurrer to all causes of action in the First Amended Complaint. In the alternative, the Authority
21 requests that the court strike improper allegations from the First Amended Complaint, as further
22 detailed in the accompanying notice of motion and motion to strike.

23 Dated: January 10, 2007

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

24 By: 

25 FRED M. PLEVIN
26 SANDRA L. MCDONOUGH
27 ALBERT R. LIMBERG
28 Attorneys for Defendant
SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY

CIVIL JUSTICE OFFICE 1
CENTRAL DIVISION
2007 JAN 10 PM 3:21
PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to this action. I am employed, or am a resident of, the County of San Diego, California, and my business address is: Paul, Plevin, Sullivan & Connaughton LLP, 401 B Street, Tenth Floor, San Diego, California 92101.

On January 10, 2007, I caused to be served the following document(s):

1. NOTICE OF MOTION AND MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT;
2. NOTICE OF HEARING ON DEMURRER AND DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT;
3. DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT; AND
4. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND/OR MOTION TO STRIKE.

on the interested party (ies) in this action by placing ☒ a true copy ☐ the original thereof and addressed as follows:

Cathryn Chinn, Esq.
3990 Old Town Avenue, Suite A109
San Diego, CA 92110
Tel: 619-295-4190 / Fax: 619-295-9529
Attorney for Plaintiff Jose Hernandez

- ☒ (By MAIL SERVICE) I then sealed each envelope and, with postage thereon fully prepaid postage, I placed each for deposit with United States Postal Service, this same day, at my business address shown above, following ordinary business practices.
- ☐ (By FACSIMILE) I transmitted the documents by facsimile machine, pursuant to California Rules of Court, Rule 2006. The facsimile machine I used complied with Rule 2003 and no error was reported by the machine. The transmitting facsimile machine number is 619-615-0700. The fax number of the party being served is 619-295-9529. Pursuant to Rule 2006.
- ☐ (By OVERNIGHT DELIVERY) I caused to be delivered such envelope by hand to the office of the addressee. I then sealed each envelope and, with postage thereon fully prepaid, I placed each for deposit this same day, at my business address shown above, following ordinary business practices for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed January 10, 2007, at San Diego, California.


Christie Byzezinski

PAUL PLEVIN
SULLIVAN &
CONNAUGHTON LLP

PROOF OF SERVICE

1

CASE NO. GIC 871979

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN DIEGO**

9
10 JOSE HERNANDEZ,

11 Plaintiff,

12 v.

13 SAN DIEGO COUNTY REGIONAL
14 AIRPORT AUTHORITY, a public entity;
15 and DOES 1 through 10, inclusive,

16 Defendants.

Case No. GIC 871979

PLAINTIFF'S OPPOSITION TO
DEFENDANT SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY'S
DEMURRER AND/OR MOTION TO
STRIKE

Date: April 6, 2007
Time: 9:30 p.m.
Dept: 71
Judge: Hon. Richard E. Strauss
Complaint Filed: September 1, 2006
Trial Date: None Set

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PLAINTIFF'S .OPPOSITION TO DEFENDANTS DEMURRER AND/OR MOTION TO STRIKE.....

I.

INTRODUCTION AND SUMMARY OF FACTS

Defendant San Diego County Regional Airport Authority ("Authority") has informed the court that they have demurred on specific grounds. The grounds stated and the plaintiff's response to those grounds are:

Defendant Authority:

"1) The second cause of action fails because there is no private right of action for violation of the Authority's Ethics Code."

Plaintiff's response:

The Second Amended Complaint contains no cause of action for violation of the Authority's Ethics Code.

Defendant Authority:

"2) The second fourth [sic] causes of action are all common law claims and are barred by Government Code section 815(a);"

Plaintiff's response:

The Second Amended Complaint contains no second or fourth causes of action.

Defendant Authority:

"3) Each cause of action is barred by discriminatory act immunity and investigatory immunity found in Government Code sections 820.2 [second through fourth causes of action] and 821.6 [all causes of action], which apply to the Authority through Government Code section 815.2(b);"

Plaintiff's Response:

There is no second or fourth cause of action in the Second Amended Complaint. The acts contained in the Second Amended Complaint do not fit within the type of policy decisions determined to be immune.

Defendant Authority:

"4) The first, second and fourth causes of action, which allege retaliation and violations of Labor Code section 1105.2, fail as a matter of law because

1 Plaintiff has not alleged facts supporting a prima facie case showing that he
 2 reasonably believed that the Authority's actions violated a state or federal law,
 3 rule or regulation;"

4 Plaintiff's Response:

5 There are no second and fourth causes of action in the Second Amended Complaint.
 6 The Second Amended Complaint contain facts showing violations of the ADA
 7 prohibition on denying reasonable access to disabled persons to public facilities;
 8 violations of the California Public Utilities Code section 17000, et seq, and violations
 9 of the California Code of Contracts section 100 et seq.

10 Defendant Authority:

11 "5) The third cause of action for invasion of privacy fails as a matter of law because
 12 Plaintiff did not have any reasonable expectation of privacy in his motor vehicle
 13 repair records or in third parties' opinions regarding his marriage."

14 Plaintiff's Response:

15 The Second Amended Complaint contains no third cause of action.

16
 17 To state cause of action under California Labor Code Section 1102.5 requires that (1) the
 18 plaintiff establish a prima facie case of retaliation, (2) the defendant provide a legitimate,
 19 nonretaliatory explanation for its acts, and (3) the plaintiff show this explanation is merely a
 20 pretext for the retaliation. The statute covers public sector employees. The first question is
 21 whether the employee disclosed activities covered under the Act. Section 1102.5 describes the
 22 covered disclosure as the reporting of "a violation of state or federal statute, or a violation or
 23 noncompliance with a state or federal rule or regulation." (California Labor Code Section 1102.5
 24 (a)-(c)). This broad category of employer misconduct covers a multitude of violations and
 25 noncompliance that qualify as a protected disclosures. When making the disclosures that are the
 26 subject of this Complaint, the plaintiff Jose Hernandez had specific statutes and regulations in
 27 mind when he made the disclosures that he believed violated laws.

28 California Labor Code Section 1102.5 only requires that the plaintiff have reasonable

1 cause to believe there was a violation or noncompliance by the Airport Authority. (The
2 "Authority") Specifically, Labor Code Section 1102.4(b) provides:

3 "An employer may not retaliate against an employer for disclosing information
4 to a government or law enforcement agency, where the employee has *reasonable*
5 *cause* to believe that the information discloses a violation of state and federal
6 statute, or a violation or noncompliance with a state or federal regulation."
7 [California Labor Code Section 1102.5(b)]

8 Whether or not an employee has "reasonable cause" to believe the disclosure was a
9 protected disclosure is a question for the trier of fact. (*Green v. Ralee Engineering* (1998) 19
10 Cal.4th 66). In *Green* the plaintiff was not required to prove an actual violation as long as he
11 reported his "reasonably based suspicions" of the illegal activity. The plaintiff, Jose Hernandez,
12 was the Director of Landside Operations for the Authority. Throughout his experience as a
13 Director Hernandez disclosed numerous activities that he believed were violations contained in
14 the Authority's governing statutes. The Authority is a public entity created by state law,
15 California Public Utilities Code sections 170000 - 170084. As a Director, the plaintiff was
16 intimately familiar with these statutes and their enabling legislation. Hernandez knew the
17 content of these laws and regulations and he referenced them constantly in his work. The
18 plaintiff reasonably believed that the Authority's activities violated the statutes and the
19 regulations. [Complaint paragraphs 11; 41]

20 While Section 1102.5 requires an employee make a disclosure to a specific entity, this
21 plaintiff works for a "government agency". Public sector employees may satisfy this requirement
22 simply by complaining to their supervisor. Hernandez satisfies this requirement by his
23 complaints to his supervisor, the Vice President of Operations Ted Sexton. Hernandez also
24 voiced his complaints in numerous private meetings, including committee members and
25 management meetings. [Complaint paragraphs 11; 12; 13; 18; 28; 37] In this respect, Section
26 1102.5 provides:

27 "A report made by an employee of a government agency to his or her employer is a
28 disclosure of information to a government or law enforcement agency pursuant to
subdivisions (a) and (b)." [California Labor Code Section 1102.5(e)]

Employees who do not report illegal activities, but refuse to participate in them are also
protected by Section 1102.5. (See Cal. Labor Code Section 1102.5(e). This section makes a

1 refusal and retaliation for that refusal actionable. While Hernandez did not refuse to participate
 2 in an unlawful act, he can show covered disclosures that protect him from suffering the adverse
 3 employment action that the Authority took against him for his reports of the illegal conduct.

4 The complaint details that Hernandez suffered adverse employment action following his
 5 disclosures that resulted in the Authority singling him out and "investigating" him for
 6 accusations that the Authority refused to reveal to him. The plaintiff was terminated without any
 7 opportunity to refute any allegations. He suffered employment actions that materially affected
 8 his employment in retaliation for voicing his complaints and opposition under the Authority's
 9 governing statutes, (*Patten v. Grant Joint Union High School District* (2005) 134 Cal.App.4th
 10 1378) The adverse employment action for Labor Code whistleblowing retaliation purposes
 11 requires that, "the adverse action materially affect the terms and conditions of employment; the
 12 test encompasses not only ultimate employment decisions, but also the entire spectrum of
 13 employment actions that are reasonably likely to adversely and materially affect an employee's
 14 job performance or opportunity for advancement in his or her career." (*Id.* At 121)

15 Hernandez can demonstrate that the Authority knew about the disclosures and he
 16 documents that knowledge in the Complaint. [Complaint paragraphs 11; 12; 13; 18; 28; 38; 39]
 17 The burden will then shift to the Authority to show *by clear and convincing evidence* that the
 18 Authority would have occurred for legitimate, independent reasons outside of the disclosures.
 19 Hernandez will be able to prevail because he can show that the Authority investigated him for
 20 allegations that pale compared to the routine violations and gross abuse of the Authority's own
 21 policies and codes that the CEO Bowens, her Vice Presidents, and General Counsel all engaged
 22 in and directed other employees to engage in as well. At the very least nothing the plaintiff did
 23 during his employment would call for adverse action as severe as termination if he had not been a
 24 whistleblower. Whether or not there is a causal link between the adverse action and the
 25 disclosures is a fact specific inquiry that will be evidenced as this case proceeds to trial.

26 It is a separate violation of California Labor Codes section 1102.5(a) (even where an
 27 employer took no adverse employment action against an employee) for an employer to "make,
 28 adopt or enforce any rule, regulation, or policy preventing an employee from disclosing

1 information to a government or law enforcement agency.” Hernandez made repeated attempts to
 2 report unlawful acts by Bowens, her Vice Presidents and General Counsel to the Authority’s
 3 investigators and was prevented from doing so. This means that an employee may file a claim
 4 even where there has been no disclosure or adverse employment action. The mere existence of
 5 the rule that he cannot disclose information to the investigators about unlawful conduct violates
 6 the statute.

7 II

8 A. DISCRETIONARY ACTS BY THE AUTHORITY

9 The Authority makes a blanket claim of governmental immunity as “the result of the
 10 exercise of the discretion” vested in it. [Demurrer 5:15] In fact, the opposite is true. Under
 11 Government Code section 820.2 (except as otherwise provided by statute):

12 “The entity is not immune from liability when it is under a statutory obligation . . .
 13 or when the decision is a nondiscretionary, ministerial act.” *Island Health Plan v.*
Superior Court (2003) 108 Cal.App.4th 588, 593

14 Further, under Section 820.2:

15 “[i]mmunity is reserved for those ‘*basic policy decisions which have been [expressly]*
 16 *committed to coordinate branches of the government, and as to which judicial*
 17 *interference would be thus ‘unseemly’ . . . there is no basis for immunizing lower*
level decisions that merely implement a basic policy decision already formulated.’
Barnes v. Leeds (2004) 24 Cal. 676, 685

18 The scope of discretionary immunity is limited to giving government policymakers room ‘in
 19 which to perform their vital policymaking functions.’ When “[T]he California Legislature has not
 20 clearly provided for discretionary act immunity . . . they remain subject to liability . . . until the
 21 Legislature chooses to extend such immunity.” *Id.* p. 682.

22 Defendant relies on an older case, *Caldwell v. Montoya* (1995) 10 Cal.4th 972, for legal
 23 authority to support an argument regarding discretionary immunity. *Caldwell* involves a decision
 24 by an elected school board to replace the school districts highest appointed official. It is not
 25 factually relevant to this case, but even *Caldwell*, p.96, states that under Section 820.2
 26 discretionary act immunity extends to ‘basic’ governmental policy decisions. It states:

27 “ . . . [i]mmune discretionary acts distinguish between ‘*planning*’ and ‘*operational*’
 28 functions of a government.’ Thus immunity applies to “*basic policy decisions*” but
 not to “*ministerial*” decisions that merely implement a basic policy already

1 formulated." *Id.* p. 981.

2 In *Barnes*, supra, p. 685, the Supreme Court ruled that "For immunity to apply, the defendants
3 must show that the decisions in question are properly considered as "basic policy decisions"
4 made at the "planning " stage of [the entity's] operations," rather than "routine duties incident to
5 the normal operations" of the employee's office operation. The acts alleged in the Complaint do
6 not fit within the type of policy decisions that the Supreme Court determined would be immune
7 under the statute. The routine decision to investigate any report of allegations of ethics policy
8 violations may not be characterized as a "quasi-legislative policy-making [decision which] is
9 sufficiently sensitive" to call for judicial abstention from interference that "might . . . affect the
10 coordinate body's decision making process" of a coordinate branch of government. *Id.* p.685

11 12 III.

13 PLAINTIFF'S CLAIM FOR RETALIATION

14 A. PROTECTED DISCLOSURES

15 The Plaintiff's Complaint is replete with factual allegations that show the disclosures that
16 he believed were unlawful violations of numerous activities by the Authority. [Complaint
17 paragraphs 11; 12; 13; 18; 28; 38; 39] Hernandez complained to his supervisor on a daily basis
18 about the unlawful activity the Authority was engaged in, and he complained in private meetings
19 both in committee meetings he was required to attend, and in management meetings and staff
20 meetings.

21 Time after time the plaintiff voiced his opposition to the unlawful acts that he believed
22 were violations of the governing statutes of the Authority, and finally with the last project he
23 oversaw, he complained about the violations of the San Diego County Regional Airport
24 Authority's Code of Contracting that is codified in the state's Code of Contracts. [Complaint
25 paragraph 40]

26 The plaintiff disclosed each and every one of his complaints about the Authority's acts that
27 gave him reasonable cause to believe that the Authority violated statutes and failed to comply with
28 statutes of the California Public Utilities Code and the California Contracts Code. These

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PLAINTIFF'S .OPPOSITION TO DEFENDANTS DEMURRER AND/OR MOTION TO STRIKE.....

1 disclosures were made exclusively to members of the Authority as he learned of them while
 2 performing his job as a Director. None of the information of which he complained was made
 3 public information by the Authority prior to the plaintiff's disclosure of it to the Authority.
 4 [Complaint paragraphs 3; 10; 11; 12; 13; 14] The information learned and disclosed by the
 5 Plaintiff was accumulated through his direct involvement in the production of the development
 6 plans for each of the four projects to which he voiced his serious opposition because he believed
 7 the Authority was engaging in unlawful acts. As a Director for the Authority and having direct
 8 oversight for each of the four properties that are the subject of his disclosures, nothing happened
 9 on any of those properties without his knowledge of it. From project development to
 10 environmental assessment, to cash flow analysis, the Plaintiff was involved in every step of the
 11 operations, and all findings he disclosed were made prior to any public dissemination of the
 12 information.

13 During the negotiations of the General Dynamics site the Plaintiff produced the revenue
 14 and expense analysis for the property with historical, actual, and projected revenue streams: along
 15 with possible short-term development options. The same was done by him with the acquisition of
 16 the Teledyne Ryan property. With regard to the Lpi contract, the Plaintiff had direct oversight and
 17 approval of the monthly profit and loss statements for the parking operations. And finally, with
 18 regard to the improvements to the Southwest Airlines restroom facilities, the Plaintiff had an
 19 overarching responsibility to the traveling passengers to ensure public safety and health standards
 20 were met.

21 The Plaintiff disclosed to members of the Authority that the refusal to annex space needed
 22 to enlarge the women's restroom was in violation of the ADA. [Complaint 4:22-27-5:1-13] The
 23 Authority's failure to follow an ADA regulation qualifies as a protected disclosure. The Plaintiff
 24 had a sound reasonable cause to believe he was reporting an unlawful.

25 The Plaintiff disclosed to members of the Authority that the terms of the General
 26 Dynamics lease were improperly negotiated by the Authority and that the lease payments were too
 27 expensive and out of line. [Complaint 5:14-27] The governing statutes of the California Public
 28 Utilities Code section 170056(f) requires that:

-8-

PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER AND/OR MOTION TO STRIKE.....

1 " ... [t]he port shall agree to lease for a period of 66 years, commencing on January
2 1, 2003, to the authority parcels 1, 2, and 3 of the property originally leased to General
3 Dynamics ... consisting of approximately 89.75 acres west of the Pacific Highway ...
subject to the following terms:

4 (1) The rent shall be paid monthly in arrears at the rate of four million seven hundred
5 thousand dollars (\$4,700,000) for calendar year 2003, six million seven hundred
6 thousand dollars (\$6,700,000) for calendar year 2004, and eight million seven hundred
thousand dollars (\$8,700,000) for calendar year 2005. Thereafter the annual rent shall
be level, for the balance of the term, *based on the fair market value of the property as
of January 1, 2006, and a market rate of return on that date.*

7 (2) The authority shall lease to the port the *same fair market value per square foot* a
8 total of not to exceed 250 parking spaces . . . The parties shall first meet and confer to
9 determine by appraisal and negotiation, *the fair market value rent*. If the authority and
10 port do not reach agreement within 60 days after commencement of meetings for that
purpose, either party may submit the matter to binding arbitration in San Diego in
accordance with the Commercial Arbitration Rules of the American Arbitration
Association.

11 (3) All other terms of the ground lease shall be in accordance with reasonable
12 commercial practice in the San Diego area for long-term real property ground
leases."

13 The Plaintiff's disclosure that the Authority was failing to follow the requirements of the
14 California Public Utilities Code sections, of which all managing members of the Authority were
15 presumed to be familiar with as the statutory scheme for its very existence, qualifies as protected
16 disclosures. The Plaintiff had more than a reasonable belief that he was reporting unlawful acts:
17 he was certain of it.

18 The Plaintiff also disclosed to members of the Authority that the terms of the Teledyne
19 Ryan lease were improperly negotiated by the Authority and the failure of the Authority to
20 properly inspect and analyze the contamination of the property resulted in an increase of monetary
21 expenses by the Authority from \$10 to \$30 million dollars *after the lease was signed* to remediate
22 the environmental contaminated and the unexpected severe limitation of the use of the property.
23 California Public Utilities Code section 170056(a)(1)(B) specifies that the property subleased by
24 the port from Teledyne Ryan Aeronautical shall not be transferred and shall remain under the
25 ownership and control of the port. The Authority then leased 46.77 acres of that property to
26 develop parking spaces to contribute revenue to the Authority. Because of the contamination the
27 restricted development would net the Authority only \$500,000.00. The Plaintiff adamantly
28

1 opposed paying the grossly overcharged rent for the land the Authority could not use, and
 2 suggested pro-rating the rent for the useable land. Once again, the terms of the ground lease was
 3 not in accordance with reasonable commercial practice in the San Diego area for long-term real
 4 property ground leases, as required by statute. Once again, the Authority did not meet and confer
 5 on the fair market value rent by submitting the matter to arbitration. The Authority did no
 6 environmental appraisal before signing the lease and should have sought to arbitrate the fair
 7 market value rent after discovering the true cost of the remediation of the contamination. The
 8 Plaintiff's disclosures of the unlawful acts qualify as protected disclosures.

9 The Plaintiff then disclosed to members of the Authority that a contractor, Lindbergh
 10 Parking, Inc. [Lpi] had submitted unattainable expense numbers in their contract bid to falsely
 11 bolster their bid proposal. The Plaintiff also disclosed that Lpi was double billing the Authority
 12 for Workers Compensation insurance and had failed to competitively bid for renewal of the
 13 insurance. [Complaint 7:18-27-8:1-2, 15-27-9:1-2, 25-27-10:1-5] The Plaintiff believed these acts
 14 violated provisions of both the Authority's Contracting and Debarment Code, Article 5, Part 5.1,
 15 section 5.11 (a)(3)(4)(5)(6)(8) and section 5.18(a); and the California Public Contract Code as
 16 defined in section 1100 and in violation of California Public Contract Code section 100(b). The
 17 Plaintiff's disclosure that the Authority was failing to follow the provisions of these laws and
 18 regulations qualify as protected disclosures. The Plaintiff had reasonable cause to believe he was
 19 reporting unlawful acts.

20 **B. THERE WAS NO 'REPUBLICATION' OF THE DISCLOSURES**

21 None of the information which Plaintiff learned during the course of his employment as a
 22 Director of the Authority was public information .The Plaintiff disclosed each and every one of
 23 his complaints about the Authority's acts that gave him reasonable cause to believe that the
 24 Authority violated statutes and regulations and failed to comply with statutes and regulations only
 25 to members of the Authority as he learned of them. None of the acts of which the Plaintiff
 26 complained was made public information by the Authority prior to the Plaintiff's disclosures to
 27 the Authority. The information learned and disclosed by the Plaintiff was accumulated by the
 28 Plaintiff through his direct involvement in the production of plans for each of the four projects

1 about which he complained. The Defendant cites no factual or legal authority for its unfounded
 2 claim that any of the information disclosed by the Plaintiff was in the public arena prior to the
 3 disclosures made by him.

4 C. THE ETHICS INVESTIGATION IS RETALIATION

5 Throughout the Plaintiff's experience as a Director for the Authority it had always been
 6 common practice to provide an employee full disclosure of any and all allegations to be
 7 investigated. After disclosure of the allegations, the employee was then walked through the steps
 8 that would be taken in the investigation and given an option as to possible outcomes. The
 9 Plaintiff was never told what he was being "accused" of doing; he was never afforded an
 10 opportunity to refute any allegations; the parties charged with the initial investigation cannot be
 11 charged as being fair and impartial (among other reasons they their fees were paid by the
 12 Authority); the Authority did not follow its own investigatory policy; did not provide for a final
 13 evidentiary disclosure or determination hearing by an impartial investigatory party, but by a Vice
 14 President of Operations who had consistently violated the Ethics Code and policy himself; and
 15 finally, the investigation concluded that any allegations of quid pro quo were unsubstantiated and
 16 could never be substantiated because nothing of that nature ever occurred. It cannot be construed
 17 that the Plaintiff had ever accepted any gifts or goods as additional compensation received in
 18 addition to his salary and benefits. Plaintiff never, at any time, did anything in return for
 19 something else throughout his entire employment with the Authority.

20 It has always been the practice of the Authority to follow its own progressive discipline
 21 policy, including the following steps: (step 1) verbal warning; (step 2) written warning; (step 3)
 22 final written warning; (step 4) notice of suspension; and (step 5) notice of intention to terminate.
 23 At no point did any of the Plaintiff's actions warrant the failure to follow any of these steps. Prior
 24 to this action, he had always received exemplary performance evaluations, numerous letters of
 25 commendation and had never been the subject of disciplinary action. [Complaint paragraph 7]
 26 On the day the Plaintiff was removed from his office he was at no time asked if the allegations
 27 (whatever they were) were true, or if he even knew anything about them. The decision to
 28 "investigate" had already been made by Bowens, the CEO and a major violator of the Ethics Code

1 and policy herself, even though there were no specific allegations to investigate. [Complaint
 2 paragraphs 23; 27; 40] If there had been specific allegations to investigate the investigators would
 3 have presented them to the Plaintiff to get his response. They did not present them because they
 4 did not need his response. Bowens' intent was to get rid of the Plaintiff.
 5 When the protected disclosures began to be made about LPI, it hit too close to home for Bowens:
 6 her best friend is the lobbyist for LPI and they are constantly seen together, lunching and
 7 conversing.

8 The decision to investigate the Plaintiff was made by Bowens and it was an arbitrary and
 9 capricious decision that was an ultra vires act that took her decision to investigate outside the
 10 scope of the Authority's enabling jurisdictional statute. Her behavior is not discretionary, whether
 11 abusive or not. Defendant's demurrer correctly asserts that "Plaintiff's complaint focuses entirely
 12 on the motives of the Authority in initiating an investigation against him." [Demurrer 6:16-17]
 13 The Complaint shows that the Plaintiff did not "accept free goods and services from Authority
 14 vendors", did not accept "free roundtrip tickets to Hawaii," did not accept "tickets to football and
 15 baseball games" and did not accept "free parking passes." Each of those contentions is untrue.

16 Further, the Plaintiff did not "resign" "after the Authority informed him of its
 17 conclusions." Ted Sexton, the Authority's Vice President and a continuous violator of the
 18 Authority's Ethics Code (who was also the Plaintiff's supervisor) fired the Plaintiff and instructed
 19 him he could not leave the room until he signed the resignation papers.

20 21 **D. LEAVE TO AMEND**

22 This Complaint contains factual allegations sufficient to give this Defendant notice as to
 23 the issues of the action. It does not contain every single fact known to the Plaintiff, but enough
 24 facts so that the Defendant is fully aware that the issues are the disclosures the Plaintiff made that
 25 are protected under Labor Code section 1102, and that he suffered retaliation for reporting them.
 26 Additionally, the Complaint contains facts that support the investigation conducted by the
 27 Authority were capricious and arbitrary, and retaliatory and that none of the acts are subject to
 28 immunity. None of the allegations in the Complaint are frivolous, they are factual. Additionally,

1 "Ordinarily, it is an abuse of discretion to sustain a general demurrer to a complaint without leave
2 to amend if there is a reasonable possibility the defect in the complaint can be cured by
3 amendment. *Smith v. County of Kern* (1993) 20 Cal.App.4th 1826, 1830 In the interest of
4 seeking to clarify the Defendant's concerns that it requires a more certain statement of the
5 allegations and legal theories the Plaintiff has attached a Second Amended Complaint.

6 IV.

7 CONCLUSION

8 For the foregoing reasons, the Plaintiff respectfully requests that this court deny the
9 Authority's demurrer to all causes of action in the complaint. In the alternative, the Plaintiff
10 respectfully requests that the court deny the Authority's motion to strike allegations from the
11 complaint for the reasons stated in the accompanying response and opposition to that motion.

12
13 Dated: March 26, 2007

14 
CATHRYN CHINN, Attorney for
Plaintiff Jose Hernandez

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5 Attorney for Plaintiff
6 JOSE HERNANDEZ

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN DIEGO**

9
10 JOSE HERNANDEZ,

11 Plaintiff,

12 v.

13 SAN DIEGO COUNTY REGIONAL
14 AIRPORT AUTHORITY, a public entity;
15 and DOES 1 through 10, inclusive,

16 Defendants.

) Case No. GIC 871979

) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT SAN DIEGO COUNTY**
) **REGIONAL AIRPORT AUTHORITY'S**
) **MOTION TO STRIKE**

) Date: April 6, 2007
) Time: 9:30 p.m.
) Dept: 71
) Judge: Hon. Richard E. Strauss
) Complaint Filed: September 1, 2006
) Trial Date: None Set
)

1 Defendant San Diego County Regional Airport Authority has submitted a "Table of Allegations
2 to Be Stricken from the Complaint." The Table contains repetitive, duplicative legal grounds for
3 their basis for asking the court to strike certain allegations made in the complaint. These grounds
4 are as follows:

5 1. "Improper and irrelevant allegations" that state that "The Authority's Ethics Code is not a
6 state or federal law, rule or regulation" should be denied.

7 The Authority's implementation of the Ethics Code is permitted as an enabling regulation under
8 the state statute found in the California Public Utilities Code, section 170000 et seq. There is no
9 other jurisdiction for the Ethics Code. All demands requested to be stricken on this basis should
10 be denied.

11 2. "Local rules and internal regulations do not support a cause of action under Labor Code
12 section 1102.5, because they are not *state or federal laws*, rules or regulations":

13 The Authority's implementation of the Ethics Code is permitted as an enabling regulation under
14 the state statute found in the California Public Utilities Code, section 170000 et seq. There is no
15 other jurisdiction for the Ethics Code. All demands requested to be stricken on this basis should
16 be denied.

17 3. "Plaintiff could not have had a reasonable belief that . . . violated a federal or state law
18 because":

19 The Plaintiff formed reasonable cause to believe that the governing statute of the Authority found
20 in California Public Utilities Code section 170000 et seq. was being repeatedly violated by the
21 actions of the Authority. The Plaintiff was very familiar with the content and requirements of the
22 Statute because he referred to its constantly in his work as a Director of the Authority.

23 4. "A republication of publicly known information or findings does not support a Labor
24 Code section 1102.5 claim":

25 At the time the Plaintiff made his disclosures that he believed the Authority's activities were
26 violative of the governing statute of the Authority none of the information contained in the
27 disclosures were available to the public.

28 5. "The Authority is immune from its actions . . .":

1 There is no immunity for the Authority's actions under California Government Code sections
2 820.2

3 6. "Questioning third party witnesses regarding their observations of plaintiff and his wife is
4 not an unreasonable invasion into plaintiff's privacy":

5 Under California Government Code section 815.2(a) and the California constitution, Article I,
6 section 1, the Plaintiff, as a government employee, is protected from the Authority subjecting
7 him to having his marriage investigated by a paid investigator from the government.

8 7. "Plaintiff has not set forth any violation of the Ethics Code":

9 The complaint is replete with references to the numerous violations of the Ethics Code by the
10 CEO of the Authority, the Vice Presidents of the Authority and the General Counsel of the
11 Authority. The existence of the Ethics Code was a sham. It was not followed, it was not applied
12 and it was not enforced by the Authority until the Authority decided to use it for the purpose of
13 finding a reason to terminate the Plaintiff.

14 8. "Plaintiff has not sufficiently alleged that he refused to perform an activity that would
15 result in a violation of state or federal law";


16 There is no allegation because that is not one of the allegations that the plaintiff makes in the
17 complaint.

18 9. "Plaintiff may not maintain a private right of action under the Ethics Code":

19 Plaintiff has not alleged a private right of action under the Ethics Code. Plaintiff has alleged that
20 the "investigation" by Thella Bowens and the two "investigators" she hired was an arbitrary and
21 capricious decision that renders it an ultra vires act outside the scope of the Authority's enabling
22 statute, and is an operative and routine act that takes it outside of the immunity statutes. The
23 decision to investigate was a retaliatory act directed at the plaintiff for his protected disclosures.

24 This opposition to the Motion to Strike is based on this response, the opposition to the
25 Plaintiff's demurrer, the entire file in this case, and any other evidence or argument properly
26 considered by the court in connection with this motion.

27 Dated: March 26, 2007

28 
CATHRYN CHINN,
Attorney for plaintiff Jose Hernandez

